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No. 79-880

In the Supreme Court of the United States

OCTOBER TERM, 1979

HENRY KISSINGER, ET AL., PETITIONERS

v.

MORTON HALPERIN, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOINT APPENDIX
Volume II

Petition for writ of certiorari filed December 7, 1979
Certiorari granted May 19, 1980

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MORTON H. HALPERIN, ET AL., PLAINTIFFS,

v.

HENRY A. KISSINGER, ET AL., DEFENDANTS.

Civil Action No. 1187–73

Deposition of RICHARD M. NIXON, taken on behalf of Plaintiffs at The Summer White House, San Clemente, California, commencing at 10:00 a.m., Thursday, January 15, 1976.

Reported by:
SALLY YERGER, CSR, #2008
Notary Public

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INFORMATION TO BE SUPPLIED:

[5] **RICHARD M. NIXON**

having been first duly sworn, was examined and testified as follows:

MR. SHATTUCK: I would like to observe first for the record that this deposition is being taken pursuant to Notice by the plaintiffs and a court order denying the Deponent's Motion For a Protective Order which was entered in the U.S. District Court for the District of Columbia on September 24, 1975 and is now recorded at 401 F. Supp. 272.

Mr. Nixon, we are familiar with the general statements that you have made on the subject of wire taps, so most of the questions I will have will go to the specific dates and specific documents and specific events.

THE WITNESS: Counsel, before you make a statement, could I make a preliminary statement with regard to my own representation in this case?

MR. SHATTUCK: Yes, sir.

THE WITNESS: As Counsel is aware, I requested that my private counsel, Mr. Mortenson, be allowed to participate in this deposition because he has represented me in matters which are indirectly related to some of the objects that may come up in the deposition. It is my understanding that counsel for the plaintiffs objected thereto. Of course, we have no choice but to accept the objection. I will go forward with the deposition. But, let the record show that I do so object to the fact that I have been denied the right to have private counsel present, private counsel who had represented [6] me in matters that are indirectly related.

Let the record show whenever there is consultation between myself and my counsel and of course between counsel for plaintiff. I say that because that has been the custom in previous depositions.

MR. SHATTUCK: I would like to call on my colleague, Mr. Slocombe, to make a brief response because he has been in contact with Mr. Mortenson on this subject.

MR. SLOCOMBE: As well as Mr. Hundley. The depositions in this case have been taken and the discovery in this case has been conducted in accordance with a protective order entered on April 1st, 1974, by Judge Smith, the terms of which include a requirement that Mr. Sullivan's deposition, the first deposition of a defendant that we took, be taken with no one present but the parties and their attorneys.

We have interpreted and I think that this applies to Mr. Christenbury as much as to the plaintiffs, that the order was applying to all depositions.

It is my understanding that the appearance which has been entered for you in this case in your private capacity was by Mr. Hundley. We have been dealing with Mr. Hundley in the scheduling of this deposition and we had expected that he would be present.

We have no objection to the attendance by your private attorney in this case. We do not believe it would be consistent with the protective order to have an attorney who represents you in another capacity and who thus, is not within the scope of the protective order with respect to [7] documents in this case which we will be discussing, in attendance without the permission of the court.

I so advised Mr. Mortenson. I assume he elected not to make an application to the court for modification of the protective order to which we would have objected, but we would have had an opportunity to discuss the issue. We have no objection to Mr. Hundley or anybody else who has entered an appearance for you in this case being present at this deposition.

THE WITNESS: Let me make it clear as far as the position counsel has just stated, Mr. Mortenson has informed me thereof. I told him that to go through the legal rigamarole of taking it up again with the court would only delay the deposition and I believe that it is important to have the deposition taken so this matter may be decided. Consequently, I have decided that we would not raise it from a legal standpoint at this point. But, I simply want

the record to show my position, just as the record will show the position of counsel from the ACLU. Obviously, counsel for the ACLU, with its very deserved reputation for being enormously concerned about the necessity for anyone in a case to be fully represented by counsel, is one that I had in mind when I thought perhaps counsel would agree in this instance that Mr. Mortenson, because he was familiar with the matters that I will be questioned on which had come up in a previous deposition, that counsel for the ACLU might not object.

But I understand your objection. You stated your position. I have now stated mine. I think you should [8] go ahead with the questions as we of course, have not too much time.

EXAMINATION

BY MR. SHATTUCK:

Q Mr. Nixon, I would like to direct your attention to the first area of questioning which will be the period prior to May 9, 1969. I will ask you first when did the name Morton Halperin first come to your attention?

A The name Morton Halperin first came to my attention I believe, to the best of my recollection, in April or May 1969. I cannot be held down to specific dates due to the fact, you should know, that I do not have my presidential papers and can only therefore check with counsel to see what information they can find which would serve to refresh my memory on it.

I think it was in April or May of that period. That is no reflection, incidentally, on Mr. Halperin. But, one must understand and Mr. Halperin is well aware, that Dr. Kissinger ran a very tight shop and Dr. Kissinger generally came into the President by himself.

And as a matter of fact, I don't even recall as far as a meeting in the oval office is concerned of his bringing Mr. Halperin in until a couple or three months after I had been president.

So, Mr. Halperin may well have been present. I may have met him on some occasion when I met with the members of the NSC staff generally. But as far as his name [9] coming up in connection with the matters concerned here, it was either in April or in May of 1969.

Q In connection with the leaks that you have discussed in your prior public statements on this matter, was there specific discussion of wire tapping in this period prior to May 9, 1969?

A Discussion with whom, Counsel?

Q With anyone.

MR. CHRISTENBURY: Mr. Shattuck, so the record is clear, I presume you are referring to the May 22 statement and the letter to the Senate Foreign Relations Committee, whether you want to clarify that this is what you are referring to or whether there is any other pubic statement you had reference to—

MR. SHATTUCK: Those are the two public statements to which I averred.

MR. CHRISTENBURY: You are referring to any discussions that may have occurred as to leaks?

MR. SHATTUCK: The question was with respect to wire tapping.

MR. CHRISTENBURY: Excuse me. Just a second. As you are aware, our restraints will be the same in that regard. We certainly want President Nixon to respond fully and responsively in this area as he can.

However our position traditionally has been that this is only a suit by Dr. Halperin and therefore as to the identification of facts relating to the specific individuals, the testimony will be limited in that area.

[10] But, within those constraints, certainly the President can answer those questions.

THE WITNESS: Incidentally, I would ask the record be changed to note the reference to Dr. Halperin, knowing how sensitive Dr. Kissinger was about being called Mister

or Doctor. I meant Dr. Halperin, rather than Mr. Halperin.

MR. SHATTUCK: I think Dr. Halperin will permit it to be used interchangeably.

Q Do you recall the question?

A Would you repeat it?

MR. SHATTUCK: Would you restate the last question.

THE WITNESS: No. I can recall it, I think, the general nature of the question. It was when there was any discussion of the use of wire tapping for the purpose of determining who within the administration might be leaking classified information; is that the question?

Q BY MR. SHATTUCK: That is the question.

A Right. I think in order to answer that question it is necessary to indicate why, as President and particularly at that time with the war in Viet Nam, when it was in a rather escalated position, I felt that it was vitally important to have tight security with regard to national security information. If counsel will permit, I will make a brief statement with regard to my concern about the need for security.

Q I don't want to interrupt you, Mr. Nixon. But I believe your opportunity to make such a statement will come during the course of the deposition and we could continue the flow of the questions.

[11] A I think that for that purpose that I can answer the question in this way then and cover both grounds very quickly. Then we can come back to you if you would like to pick it up.

At the time that I assumed office in 1969, there were five major areas in which I had determined there should be a new direction for American policy. One of course was to end American involvement in Viet Nam in a way that would enable America to continue to play a responsible role in world affairs.

Second was to develop a new relationship with the People's Republic of China.

Third was to develop a new relationship with the Soviet Union.

Fourth was to try at least, to make some progress with regard to cooling the potential time bomb in the Mid-Eastern area with all the ramifications involved.

Finally, it was to take the necessary steps with our allies in Europe to reestablish an Atlantic Community that worked together rather than against each other and to remove some of the misunderstandings that had developed during the previous administration.

These were of course, very high goals. Every president has high goals when he comes in and we tried to implement them and succeeded in varying degrees in all five objectives.

In order to accomplish this, in long discussions with Dr. Kissinger after I had selected him as the [12] National Security Advisor, before I was inaugurated, I decided that the National Security Council procedures, which as you all know had been set up by President Eisenhower and had been regularly followed during this period—which had been rather generally dismantled during the Kennedy administration and during the Johnson Administration—

Those procedures should be reinstituted and by reinstituting them, we thereby could have the kind of consultation and the broad range of discussions that were needed in order to make progress in these five areas.

Some related to each other and some were independent. As we had these discussions, I pointed out to Dr. Kissinger that I wanted to have views expressed from the bureaucracy, the State Department, the Defense Department, the CIA and et cetera. All of them were involved in national security affairs. Also, I wanted to have on the National Security Staff a variety of views expressed because only when the decision maker gets the broadest possible range of options before him can he make what is the best decision.

After having set this in place immediately after the inauguration, I recognized that there were some risks in-

volved. One of the reasons that I had some concern was based on a conversation I had with former President Johnson. This was after my nomination, of course and there was another one after my reelection before I was inaugurated.

President Johnson said he had noted my decision to reinstitute the regular meetings of the National Security Council and rebuild the staff. He said and I am quoting him [13] from recollection, that, "I must warn you." That the reason he had not had the formalized procedures in the National Security Council with the broad range of discussion that would be entailed was his, I would say, almost obsession about the possibility of leaks.

He said, "I have every confidence in my Secretary of Defense, Secretary of State Rusk, in the Director of the CIA and Mr. Rostow. But the difficulty is that when these people go back to their staffs and debrief, there are people on their staffs who, not because of any disloyalty but because of lack of judgment and because they had information and might not know how important it was to keep that information classified, might discuss it with an unauthorized person. The information leaking therefore would not enable Johnson to go forward with what he considered to be a very top secret operation.

He therefore suggested that I should take every precaution to see to it that not only the agencies like the State Department, the Defense Department and so forth had responsibility for policing their own shops in this regard but that I should take the responsibility and delegate it to someone on my own staff. That of course would be Dr. Kissinger, to see to it that any of those on his staff were people that could be totally trusted with information. He also indicated at that time that he had great confidence in Mr. Hoover. One statement he made to me was that without Mr. Hoover, and he was speaking only of National Security Council matters when we were having this discussion, without Mr. Hoover he said he simply [14] couldn't have run the foreign policy of this country during the last

difficult months of his presidency. What he was referring to, I do not know.

We come now to the period after I became president and we will get to the specific question very quickly.

Within two days after I was in the Office of the Presidency or I should say within a week after I was in office and the time can be determined if we desire, if it becomes relevant by checking further files, there came across my desk a memorandum from Mr. Hoover. It was a memorandum called a Summary With Regard To Top Secret Information.

The memorandum dealt with a British correspondent. I quickly scanned the memorandum. As you can imagine, there were a great number of memoranda that came across my desk, particularly in those early days. I didn't have much time for any of them except the most important ones. I called Mr. Hoover and said, "What is this all about?"

He said, "Well, this individual is named as one who we have been surveilling." And he indicated they used electronic surveillance for a number of years. It was inaugurated in the previous administration. I don't know whether it went clear back to the Kennedy administration or the Eisenhower administration, but he said, "We have been surveilling him for years because our information is that he is probably an intelligence agent for the British and also we therefore have every reason to believe that information he gets through a broad range of contacts within the government might get outside of channels and without any intent to harm the [15] United States, be leaked and therefore be harmful without his intent to do so."

When I saw this memorandum, I recall calling Dr. Kissinger into my office and I handed it to him. I knew the individual. He knew the individual. I said, "As far as this kind of memorandum is concerned, I don't want to see any of them in the future. I have not the time to look at them. That is your job. I mean, if there is anything that comes up that indicates a problem, then you let me know."

That was the first indication I had that wire tapping by the Director of the FBI, apparently with authority that had been given either by the Attorney General or by the President and it could have come from either or both, the previous President or Attorney General, wire tapping was undertaken in National Security matters.

We now come to the point where the question or the decision had to be made as to what if any action we would take in order to avoid leaks of highly classified information, to stop these leaks.

First, to ascertain who was leaking and second to take the appropriate action to plug up the leaks.

I again emphasized that this was not a loyalty program. I would more describe it as a judgment program because it has been my experience over the years that the great majority of people, whatever their political views, who work within an administration are loyal to the United States. They are loyal to their government. They may even be loyal to the administration, but they may have very different views.

[16] Also, I have found over many years that Senators and Congressmen who, as recent investigations have indicated, have almost an obsession about leaking information, some of them. They think it may make news. Sometimes, there are those on staffs who have a proclivity for talking loosely about what they know, what they have heard. And these people of course, are ones with whom confidential discussions should not take place.

The problem did not seem to me to be a very significant one in those early days. Now I am speaking now of the first couple of weeks of January.

But it became to me a very serious problem early in February. Early in February, I called on President Eisenhower and, as I did in the last days of his life, I briefed him on international matters and National Security matters and asked for his advice.

We had had a National Security Council meeting on our policy toward the Mideast. I briefed President Eisenhower on that particular meeting and asked for his advice.

The following day, there appeared in the press quite an accurate description of the matters that I had briefed him on. And the following day or within a very short time thereafter, Dr. Kissinger came to my office and told me that he had received a call from President Eisenhower. Dr. Kissinger, at my instructions, had called upon him before the inauguration to be briefed by him and consulted him. Dr. Kissinger said he had a call from President Eisenhower in which President Eisenhower expressed very deep concern about leaks from the National Security Council. [17] President Eisenhower strongly supported my move to reestablish the National Security Council mechanism.

However probably because of his military background and also because as President he realized that the same considerations applied during his term, even though we might not be at war, he had a passion for confidentiality. He had the same view in this regard to views that I had. That is to get the broadest range of discussions so that the decision maker can make the best decision. But he also had the view that in order to get that broad range of discussion, it was very important that those individuals who were voicing their position, and those individuals particularly who talked directly with the President or with one of the President's top advisers, be totally secure. And he said to Dr. Kissinger that we had to do something to tighten up our shop to see to it that this kind of leak does not occur or we were going to have to go back to the kind of procedures that Johnson and President Kennedy followed, particularly President Johnson. I don't quite know what happened in the Kennedy administration. But referring to the Johnson administration where as you know, this has all been publicly disclosed by President Johnson's memoirs, he tended more often than not except on very formal procedures to meet in informal meetings with three or four of his top advisers without others present.

Then in the months of January—from January 20 to February, March and April we had as you know, a rather busy time with regard to the problems of Viet Nam. Our

casualties were still running around 300 a week, despite the fact that negotiations had begun in Paris. Also, we were [18] beginning, on a very tentative and highly secure basis, negotiations in other areas.

The other areas that I have referred to were the Mideast, Europe, SALT, China, and China didn't come until a bit later. But nevertheless, that gives you an indication of the problems.

I note that Dr. Kissinger, who has examined his files, found that in the period of the first five months of our administration that there were at least 21 specific instances in which highly classified material from the National Security Council files or from files that dealt with National Security Council matters that might have existed in other agencies had leaked to the press. Dr. Kissinger and I both noted this. We both discussed it. We did not know what to do. We did not know how to proceed.

At that particular point, all that I did was to—when we had formal meetings in the National Security Council—was again to impress upon Secretary Rogers and Secretary Laird and Director Helms and upon Dr. Kissinger that it was their responsibility to police their own shops and to see to it any individuals who had access to information were totally reliable.

Second, that if they found someone unreliable, that they should limit their access or of course in the worst case, we trusted that that would not happen too often if not at all, they should of course be separated from their positions.

In April of 1969, late in April, I discussed [19] this matter and after the preliminary discussions with Dr. Kissinger about his concern and mine that we could not continue to have these frequent and open discussions which we had been having in the National Security Council unless we were able to stop these leaks.

I discussed with Dr. Kissinger and I decided that I should have a discussion with the Attorney General and with Mr. Hoover. We did have such a discussion. Mr. Hoover informed me that this had happened before in pre-

vious administrations. He said that there was only one way to deal with it. He said it had been done on a very classified basis because of the sensitivity that would be involved and the possible adverse press reaction and morale problems within the staffs and so forth and so on. But he said that in the case of four previous administrations that he had had authority to wire tap, to use wire tap where normal investigative surveillance—as you know, you can have surveillance and wire tapping. Wire tapping being the ultimate weapon that can be used and sometimes in a very effective way. One situation I will point out later if the question arises.

But nevertheless, it had been his practice where approval was given by the attorney general to conduct investigations of leaks and if necessary, to use wire taps to attempt to ascertain their source. I questioned him somewhat as to what the procedures should be. He said that the procedure would be for whoever was responsible within the White House for these National Security Council matters or national security matters I should say rather than National [20] Secuirty Council matters, that in national security matters whoever was responsible should when leaks occurred, if he considered them to be of a magnitude to be serious enough to affect our ability to conduct our policies, that he, Dr. Kissinger, should provide Mr. Hoover through proper channels the names of individuals who had access to the information and who might have leaked it or the names of individuals who because of their previous backgrounds which of course, we had all of these having had a Q clearance, a thorough investigation might have had any problem of being not disloyal because if they had been disloyal they wouldn't have been hired, but have shown lack of judgment before. And that he, Hoover, would conduct investigations to attempt to ascertain how the leaks had occurred. In addition, he said that the procedure would be that in his own investigations, he might find others. As you investigate one individual, you find they have people they have contact with and he would investigate others. But in each instance before instituting a wire tap investigation, that he, Mr. Hoover, insists it be

necessary for him to have under the law the approval of the attorney general or needless to say, the approval of the President if that was required. But the procedure we set up was approval by the attorney general. The attorney general then in answer to my question said that this was a legal problem. He cited two cases. I cannot remember the cases he cited. I think one was the Katz case. The other one I cannot recall. But two cases which had sustained the right of the Chief Executive through the FBI to conduct electronic surveillance for [21] national security matters. I told Mr. Hoover at the time and Mr. Mitchell, that I wanted these, the use of these procedures to be limited. I was aware that there had been widespread use based not only on what I learned when I first came into office, but the fact that one wiretap was in place, at least one at that time, installed by a previous administration. I wanted them limited. I also wanted the operation to be on a highly classified basis. I wanted them limited for reasons that are quite obvious. It was vitally important that the morale in a new administration not be destroyed or impaired in those who were working within the administration. It would, if they thought they were not trusted.

Second, I wanted them limited because it was vital, in terms of our relations with foreign governments, that when a President or his representative talks to a foreign leader, the foreign leader not feel that our procedures are so loose that conversations that they have in the greatest of confidence with us, we suspected might leak out.

So to summarize briefly, I would say that at the April meeting — it occurred in April—I told Mr. Hoover we would go forward with this program. I called Dr. Kissinger in and indicated to him that he should take the responsibility of checking his own staff, that cabinet officers should have the responsibility to do their own staffs. But that he should take the responsibility of checking his own staff because of the leaks that occurred up to that point. They could have come from outside the National Security Council staff, but they could have come from within the

staff. I felt that the White House above all, should set the example for the rest of the [22] bureaucracy. It was after that meeting I think perhaps in early May, that I was at Key Biscayne, Florida and a leak occurred, one of the 21 Dr. Kissinger described. This one he considered and I considered to be one that was highly detrimental to the United States and incidentally, a leak which was directly responsible for the deaths of thousands of Americans because it required the discontinuance of a policy that saved American lives.

I refer of course, to the leak of the fact that the United States, based on a recommendation made by the Joint Chiefs Of Staff, had begun bombing enemy occupied, North Vietnamese occupied, areas in Cambodia. Through a source—and even in this deposition because it would not be—you would not want me to reveal the source, might endanger him, but through a source I will not disclose, we learned that Prince Sihanouk, then the head of State of Cambodia, had no objection to our using our air power against those enemy occupied territories in Cambodia, those territories being used of course, to launch attacks upon American forces in Viet Nam. And this was called as you know, the Menu Program.

MR. SCHWARTZ: Did you say Menu?

THE WITNESS: Yes, Menu like you get at the Sans Souci, but it doesn't cost that much.

MR. SCHWARTZ: Yes, sir.

THE WITNESS: But in any event, when this occurred, the problem that it presented to us was that it broke off with Sihanouk—Sihanouk says, "As long as I don't officially know it, it is alright, but I don't want any foreigners in Cambodia. So if I know it, then I have [23] to object to whatever you do in Cambodia."

As a result of that leak the program had to be derailed. The net result to me was that because of this great tragedy of the leak, that we could not take the acts that I considered indispensable and that the Joint Chiefs considered indispensable to stop the buildup or at least abort the

buildup of enemy forces in the Cambodian sanctuaries which were making hit and run attacks on our forces in Viet Nam.

When this came up in Key Biscayne, Dr. Kissinger and I discussed it at length and I said under the circumstances—because this program was one that had not been discussed in an open NSC meeting, and was to be discussed and be held on a need-to-know basis—I said it was essential that he try to get to the bottom of it. I said that if this can leak, anything can leak. I said that I felt that this was one of those cases where he should directly call Mr. Hoover and provide to Mr. Hoover in his assessment, individuals who might have had access to this information by providing that information to Mr. Hoover.

(Discussion off the record.)

THE WITNESS: I do not know the contents of the telephone calls that Dr. Kissinger had with Mr. Hoover at that time except that I later learned he did furnish Mr. Hoover the names of certain individuals that he thought might be potential leakers of the information.

MR. SHATTUCK: Pardon me. Just to clarify, I had a question as to something we couldn't hear, all of us before.

Q Did you say at Dr. Kissinger's assessment or [24] Mr. Hoover's assessment as to who the individuals would be? I just couldn't hear you.

A Dr. Kissinger's assessment. The guidelines as to who should be investigated and therefore an investigation could mean simply surveillance.

Well, it could be three categories. Investigation could be a name check. It could be surveillance or it could be wire tapping. Wire tapping of course, being used only if the other two procedures were not adequate. In this instance, it was Dr. Kissinger's responsibility to furnish to Mr. Hoover the names of individuals that he, Dr. Kissinger, felt might have had access to information or that—he could use another test for who because of their personal records which of course Dr. Kissinger had available before

he hired them on his staff, might have had a tendency to be loose mouthed and have acquired the information without his knowledge and have put it out.

I should point out too, that in this discussion with Mr. Hoover, I of course having previously told Mr. Hoover that in his investigations he was to—if he ran into any leads or had any ideas as to who might be a potential leaker—he of course, should so indicate and if he considered the surveillance or the wire tapping necessary, get the proper approval by the Attorney General to proceed with the investigation. That's the general story. Then I realize you have specific questions.

Q Referring to those meetings do I understand that there was more than one meeting at which this subject of [25] wire tapping was discussed, specifically wire tapping and not the general question of investigating leaks?

A I think it is probable that wire tapping was discussed in more than one meeting. It was no secret that wire tapping technically had been used very, very heavily in previous administrations. As a matter of fact, when the subject came up before I made the decision, I checked as to what had happened and I found that the highest number of wire taps during the previous 20 years had been during the third year of the Kennedy Administration.

I do not say that in criticism because that was a very difficult year, as you recall.

Q Are you referring to wire tapping to investigate leaks?

A Wire tapping on national security matters, national security wire taps as I understood them.

Q But specifically with respect to the investigation of leaks?

A Yes, leaks. I suppose other things, as well. But my point is that I do not say it in criticism for the reason that in my view, that if one additional wire tap might have discovered and exposed Mr. Oswald, it would have been useful.

Q Who was in attendance at these meetings at which wire tapping was discussed in connection with the investigation of leaks?

A I have already indicated that. This is a matter that I discussed with Mr. Hoover. I discussed it with the Attorney General and I discussed it with Dr. Kissinger. [26] But, only in general terms with regard to the use of wire tapping. In each instance, I indicated my own view that I wanted wire tapping limited. I also, having had some experience in investigation and also having had an opportunity when I first came into office of reviewing some of the FBI name checks and investigations for Q clearances of personnel that we were considering for employment, I did not want to have an extended program. I wanted it to be limited to what was necessary and to what was in the national interest and what really involved national security. This is why for example, that if you will check the record, you will find that the number of wire taps for national security purposes during the five and a half years I was President was less than the average number of wire taps in the previous eight years.

Again, I do not say that in criticism of the practice during the previous eight years. I was not President then. President Johnson and President Kennedy must have had reasons which I assume were good reasons for doing what they did.

Q Were there any written records of these meetings to which you have referred, in which wire tapping was discussed with Mr. Mitchell?

A I made no records, no.

Q Was anybody present on your instructions to make written records or notes of these meetings?

A I don't recall.

Q Would Mr. Butterfield have been present for that purpose?

A No.

[27] Q Would Mr. Ehrlichman have been present for that purpose?

A Mr. Ehrlichman could have been present only where a matter involving the employment of personnel was involved. He was Counsel to the White House at that time. This is before he became head of the Domestic Council. All the personnel files had to go through his clearances, had to go across his desk.

But as far as the leaks are concerned, he could have been. I don't recall. As far as the wire tapping itself is concerned for the purposes of leaks, being quite specific, this was a matter that was closely held between Dr. Kissinger and of course Mr. Hoover and Attorney General Mitchell.

Q Did you ever dictate your recollections of any of these meetings?

A No. At that time I had not yet started the process of dictating recollections.

Q Are these four individuals the only ones who knew the information with respect to the possible or probable initiation of the wire tap program?

A I am referring to the fact that to the best of my recollection, those are the only three individuals I discussed it with. If these individuals discussed it with others, I cannot say. You would have to ask them that.

Q Was there discussion at these meetings of categories of individuals who might have access to the information that was leaked, general categories of individuals?

A Categories in what respect?

[28] Q Rather than the specific names of individuals, did you make any attempt to at these meetings, to ascertain the categories of persons who might have access to the information that was leaked?

A My responsibility I felt, was to check the category of individuals who worked within the White House and that would be primarily on the National Security Council staff. There is some overlapping of course but I would say that that would be what would be covered there. In addition, the only other categories would be people outside the National Security Council staff who might be present at Na-

tional Security Council meetings, but who were from the Department of Defense or Department of State or the CIA. As you know, all of them are statutory members of the National Security Council staff.

Q And did you make any attempt at these meetings or any of the other persons present, to narrow the categories beyond those that you have stated so that you were dealing with a smaller group of potential possible sources of these leaks? Or, was the discussion rather limited to the general categorical.

A The discussion was limited to the general categorical groups. But my instructions were very clear that the number of occasions on which wire tapping should be used should be limited. As I have already indicated, the idea of wire taps was one that did not appeal to me for a variety of reasons that I have previously described briefly and I did not want it, particularly in those early days of the administration, to have, if you may use such a descriptive term, a chilling effect on discussions within the administration and a chilling [29] effect that it might have with foreign leaders.

Let me be quite direct. If within a staff of any organization individuals feel that the boss is listening to their conversations or that they are being surveilled or what have you or if to the contrary, you have individuals sitting in a meeting and you look around the room and have a feeling that because there is an individual in that room who may leak it, all that the decision maker is going to get from his advisers is talk. It will mean nothing. And too often, that is the case.

Q How many persons in general would you say had access to this information? Would it have been thousands? By the "information," I am referring generally to the information that you were concerned about that was being leaked.

MR. CHRISTENBURY: Excuse me. I am not certain I understand. We have covered a number of areas where leaks occurred. Is your question generally as to each of

these areas, the number of people that may have had access?

MR. SHATTUCK: From my understanding of Mr. Nixon's testimony is that at these meetings the general problem of leaks was discussed and an attempt to determine how to deal with it was made. But it appears that only general categories of persons who might have access to the information was discussed. Therefore, my question is approximately how many persons would you say would have fallen within those areas, categories? You said the State Department, the NSC and et cetera.

Q Would it have been thousands or more than that?

[30] A I would be unable to say. If it were in the thousands, there would have been a new Secretary of State and a new Secretary of Defense the next day because it was my strict instructions—incidentally, President Eisenhower had strongly recommended this to me and independently, President Johnson before that had recommended to me to keep highly sensitive information on a need-to-know basis. Anybody who attended National Security Council meetings will recall that when any sensitive matters were discussed, that I gave strict instructions that there was to be no debriefings. That is not always. This again, was something that I had mixed emotions on because who knows? A debriefing with some lower level person may get an idea from that, that some high level person couldn't even think of because sometimes the lower level people are brighter than the higher level people by your design or otherwise, usually the design of the higher level person.

But the point is that my instructions were that where highly sensitive information was concerned, that those who had access to it be very limited. Consequently I expected that the surveillance, which in some cases led to wire tapping, would be limited and the fact that—I think the number was seventeen—the number of surveillances was less than in the Kennedy Administration, when there was no war except for our 15,000 advisers in Viet Nam, also in the Johnson Administration, is an indication of my

administration's attempts to keep wire tapping of this sort in the national security area to a minimum.

Q Mr. Nixon, with respect to the Cambodia bombing [31] leak which is the leak you have principally referred to, was it discussed at these meetings? Were there discussions that there may have been quite a large number of persons in the Department of Defense who had operational knowledge of the information concerning the Cambodian bombing and simply that of course, the Vietnamese and others outside of government might very well have known? Were there any discussions of that kind?

A Were there discussions of the Cambodia bombing? Let me first say that it was not discussed in the NSC meeting. It was discussed in the Oval Office for the first time. I made the decision for the first time on a Sunday afternoon. The only people present were Secretary Laird, Secretary Rogers, Director Helms, Dr. Kissinger and myself and possibly General Haig was there taking notes, although I don't recall.

But I remember the meeting very clearly because it was a rather critical decision. It was one where the Chairman of the Joint Chiefs was there, not the Admiral but the General who recently died, General Wheeler who was then Chairman of the Chiefs. I indicated in my statement to them the fact that this had to be closely held. That there could be no debriefing or leak. Obviously the Chairman of the Chiefs said, "Well, we have got to set it up and those who participate in it are going to know. If we can't trust them, we can't trust anybody."

I mean, we have had wars that this nation fought and it is usually to our great credit, not because we wanted to but because we were forced to, once we have been [32] involved in this century we have had pretty good security among our military people. But in any event, the military, as far as anybody in the State was concerned, no problem because Rogers would never debrief if he was told not to. He was highly sensitive with security matters.

As far as anybody in the CIA is concerned, I think there was no problem because Helms was highly sensitive about this.

As far as Dr. Kissinger was concerned, I didn't consider that there would be a problem. I didn't know who in his department might need to know. But it could have been possible that he felt that others needed to know.

The only problem is that, I do know this, that I wanted everybody—that the reason this had to be kept on a highly classified basis was the Sihanouk problem, that if it became known that we were doing it, Sihanouk would have to attack it and we would have to stop it. If it did not become known that we were doing it—the North Vietnamese weren't going to be objecting to it because they had constantly, at least in our assessment which proved incidentally to be right, the North Vietnamese were not objecting to it because they did not want to indicate they were occupying portions of Cambodia and Sihanouk had already indicated he did not object. He would have liked to have the North Vietnamese presence reduced because while he didn't like the idea of an American domination over his country which we never intended, he liked even less his much closer neighbors, a long time traditional enemy, the Vietnamese, North and South. He wanted them out of there.

[33] But he was in a very precarious position because as you are well aware, particularly Dr. Halperin is quite aware, the Cambodians had a very, very significant North Vietnamese—Khmer Rouge I think is the name or the title of the name that is used to describe them, elements within his country. His position would have been intolerable had he openly approved the U.S. bombing of what was Cambodian territory. But, this was enemy occupied. If I might use an analogy, I can think of no one who objected to the United States bombing the Nazi occupied portions of Western Europe, France and so forth. So, we weren't bombing France, we were bombing the Nazis.

In this case, we were not bombing the Cambodians, we were bombing the North Vietnamese and this I think was Prince Sihanouk's evaluation as well.

Q Were there in fact, persons with operational need-to-know knowledge in the Department of Defense of this Cambodian bombing? I believe your testimony is that there were. But, I want to clarify that.

A There could have been.

Q Did you ask Secretary Laird to do any checking on the leaks in the Department of Defense?

A Oh, yes. I didn't need to ask Secretary Laird. I don't recall specifically asking him. But Secretary Laird in the meeting that we had on that Sunday afternoon, Secretary Laird, one of the cautions that he raised was the possibility of leaks.

But on balance, he said we should go forward [34] because of the fact that the gain of saving American lives by reason of reducing the North Vietnamese or enemy capability in Cambodia to make a hit and run attack on our forces in South Viet Nam, he thought that outweighed the leak problem. But Secretary Laird and Secretary Rogers did not need to be told every day or at every meeting. This was a highly classified matter. They knew it from the beginning. Incidentally, both were totally circumspect and I believe did the very best they could within their departments to avoid it. I am not here now to say who leaked it. I don't know.

Q You stated that you had a conversation that day with Dr. Kissinger in connection with this leak. Did you have a conversation that day with Secretary Laird about the leak?

MR. CHRISTENBURY: Excuse me?

Q BY MR. SHATTUCK: This is May 9. Am I correct?

A No. I don't recall a conversation with Laird or with Rogers about the leak. It is very possible they were not at Key Biscayne. Dr. Kissinger was there.

It is possible I had a discussion with them later. I know that at some point very soon thereafter, he expressed concern about the leaks.

Q Did you direct Dr. Kissinger to select the names of the persons which he would give to Mr. Hoover on that day? Was it your understanding that Dr. Kissinger would select the names?

A I of course did not select the names myself because I did not know. I told Dr. Kissinger that he should [35] inform Mr. Hoover of any names that he considered to be prime suspects. By "prime suspects," again if we may use the ACLU term, I did not say that in a condemnatory fashion, prime suspects or prime targets by reason of the fact that they might have had access or by reason of the fact that they had previous records about being loose in their talk. That was Dr. Kissinger's responsibility. It was his responsibility not to control the program but solely to furnish the information to Mr. Hoover. Mr. Hoover then was to take it from there and then to get the appropriate authority from the Attorney General before of course installing any electronic surveillance which Mr. Hoover needed.

Q So it was for Dr. Kissinger on that day following your instructions, to select the persons who had access to information and based on other factors determined by him, would then supply those names to Director Hoover; is that correct?

A No. Dr. Kissinger discussed the matter that day with Mr. Hoover. My recollection is that they went back and forth, Mr. Hoover and Dr. Kissinger as to who might be the individual or individuals who should be surveilled. It was at a later date that I think was two days later that General Haig established the direct liaison with Mr. Sullivan of the FBI. I don't know who told me that. I think it was Sullivan. From that time on, Haig as Kissinger's deputy would furnish names of individuals.

And the responsibility thereafter was Mr. Hoover's to conduct a surveillance and furnish information to indicate those occasions when he felt that further [36] surveillance

would be required of other individuals because of contact that those who were being surveilled were having. And of course to indicate those occasions when he thought that the program was no longer serving a useful purpose. That was his responsibility.

Q Did you on that day May 9th, or any prior date, instruct Dr. Kissinger to request a wire tap on the telephone of Morton Halperin?

A To instruct him to tap Morton Halperin?

Q Yes.

A I have no recollection of Morton Halperin's name coming up. I do not want to sound as if I am being derogatory of Dr. Halperin, who is very distinguished in his academic background. Dr. Kissinger, one of his great talents was to surround himself with very bright people.

I do not recall Dr. Kissinger mentioning Mr. Halperin or Dr. Halperin being with him.

I have since learned, but did not know at the time, that Dr. Halperin was actually in Key Biscayne with Dr. Kissinger at the time.

Q So that the record is clear, did you on that date or any other date prior to that instruct Director Hoover or Attorney General Mitchell to install a wire tap on Dr. Halperin?

A Did I? No. I have no recollection of so doing. I think the record should show that, because the contrary was in the public press and this deposition will also be in the public press, probably in the P.M. papers—

[37] MR. SHATTUCK: Your attorney has the opportunity to say the magic words on that.

THE WITNESS: No. I have every confidence in the attorneys for the ACLU to follow a single standard with regard to the rights of those they represent, whether it is with regard to their right to counsel. You are only interested in the truth. You have a set standard.

Therefore, I leave myself totally in your hands in that respect and of course, would be very surprised if the

ACLU would, despite the great pressures you have from the press, deliberately leak any information prior to the time that Judge Smith has approved it.

MR. SHATTUCK: We will certainly treat every party and witness in this case with absolute equality, Mr. Nixon.

THE WITNESS: I am just trying to get—

MR. CHRISTENBURY: Mr. President, while I share your admiration for the ACLU, I think for clarity here we have to add a standing agreement that no matters discussed at the deposition itself would be disclosed publicly until counsel for all parties have had an opportunity to review the depositions and determine whether there are any portions that require being sealed pursuant to Judge Smith's protective order and pursuant to our understanding. I presume that is our arrangement.

THE WITNESS: Well, I must say I have every confidence of course in my fine counsel seated at my right and counsel on the left, here. But in a previous deposition, not with the Special Prosecutor, but the one involving our suit with regard to our Presidential Papers, the deposition was leaked deliberately [38] and apparently by opposition counsel to the press prior to that time.

I understand it is par for the course. If it does, I will not be surprised but I will be a little disappointed.

MR. SCHWARTZ: I am sorry. I didn't hear that. You wouldn't be surprised?

THE WITNESS: No because I figure that it wouldn't be from you.

Q BY MR. SHATTUCK: With respect to the instructions that you testified that you gave to Dr. Kissinger on May 9—

A No. No, I am sorry to interrupt you because I was talking about Dr. Halperin. There were presidential supporters and Dr. Halperin will recall this, there were some who objected to his being employed just as they objected to many that we employed in those early days and months.

There was a feeling among some of our supporters that those who had not supported us in the campaign, that we should have no holdovers, who had anything to do with the previous administration and that we therefore should be surrounded totally by what are called long-time loyalists and et cetera.

Let me say that that argument did not fall on deaf ears. I have appreciated as any man in public life must, the need to have people who are loyal and dedicated and direct. But I have also found that in order to make decisions, the decision maker must listen to and must hear a whole spectrum [39] and range of views and he isn't going to get it from a bunch of yes men. That is why I frankly approved of Dr. Kissinger's moving out as he did, not only in having a very broad range of views within his staff, many of whom had served the previous administration and some in the Kennedy Administration and some in the Johnson Administration, many of whom had been his student.

There were a variety of views. After all, they had gone to Harvard.

In addition to that, I told our people whether it was Dr. Kissinger or others, to take the flack. I said I just wanted the best man or woman for the job.

But when it came to leaks, even a loyalist can leak and has. We won't go into any specific names because leaks occurred—without getting into any esoteric conversation in this very highly structured legal proceeding—leaks occur as I indicated from the most unexpected sources. Sometimes more often than not, without a bad intention.

This particularly has become more common these days because those who do leak information and particularly those who print leak information get Pulitzer Prizes and those who leak it are made national heroes, why not leak it?

Q Mr. Nixon, so that we can clarify this last portion of your testimony, are you testifying or are you stating that you personally had no doubts about the employment of Morton Halperin?

A I was not asked about his employment.

MR. CHRISTENBURY: I don't believe the record reflects that question or response.

[40] MR. SHATTUCK: I will make that a question.

THE WITNESS: I did not. I was never asked about Mr. Halperin's employment. I was never asked about General Haig's employment or anybody on Dr. Kissinger's staff.

I did not look at—what do you call them? The curriculum vitae, I did not look at. I did not look at the FBI reports.

As a matter of fact, I have never during the time I was president, I refused to look at any one of the personnel reports on individuals that we were considering hiring because these personnel records—and this is not critical of the FBI—they cover everything from the time the person was born. It is unsubstantiated material from informants for this or that or the other thing and something that happened many years ago, which somebody has since disproved.

The net result is that first it would be a waste of the President's time. But second, it would create a very, in my opinion, uncomfortable relationship between the President and the individual he is working with to have personal information of that sort, not put in because it was personal, by the FBI but because they put in everything, not knowing what may be important.

Q So you did not express personal doubts about the employment of Dr. Halperin during this period?

MR. CHRISTENBURY: I believe the testimony was that he didn't reflect on this

I would prefer the record to speak for itself, rather than your characterization.

[41] Q BY MR. SHATTUCK: The question is framed—

A Counsel, I know you would not want to try to put words in any witnesses' mouth. I simply said that as far as Dr. Halperin was concerned, his employment by Dr. Kissinger was not brought up to me for decision. This is the

only thing that came to my attention, because it was in the public press, was the fact that there were some who thought that not only Dr. Halperin but others on the NSC staff and in the State Department were either holdovers or had other views than were currently being promulgated by the administration. But that was simply par for the course.

As far as Dr. Halperin is concerned, his name is one of many that came across. I took no note that I can recall or any notice except if unusual material came to my attention. It was passed on to Dr. Kissinger for whatever decision he felt was right under the circumstances.

Q Referring again to instructions to Dr. Kissinger on May 9, would there have been any written record of those instructions? Does there exist now written a written record of those instructions?

A I wouldn't be able to know. I don't believe so.

Q Did you dictate them into a Dictabelt at that stage?

A No. I was not as I said—I did not start that practice until years later.

Q No one would have taken any notes of those instructions?

[42] A With Kissinger and me? Not unless he did. It was just the two of us together.

Q Before the wire-tap program was initiated—pardon me. Could we take a short consultation?

(Consultation by attorneys for both sides off the record.)

MR. SHATTUCK: Pardon me. I will continue with the question.

Q Before the wire tap program was instituted, did you discuss specifically the legality of wire tapping persons to investigate leaks? I believe there has been some testimony about this. But I just want to find out precisely what was discussed, what discussions you might have had.

A I can recall no discussions. It is possible some could have occurred. I do not know. I was greatly concerned. If I could tell you why I was concerned—

Q Certainly.

A I understand that Counsel tells me that the defense here is good faith. I should make the record clear that I was told as I pointed out earlier, by Mr. Hoover that four presidents had conducted such investigations and considered them to be perfectly legal and provided they were authorized by the Attorney General and approved.

Also, that the Attorney General advised me that he had studied the law on the situation and that wire tapping, he quoted two previous cases which my counsel will furnish to you. Probably you have read those law books. You probably have, too.

[43] There were two cases which approved electronic surveillance where national security matters were concerned. I had not only that information but I had from at least an implication I felt, from my conversations with President Johnson that he felt that they were legal. He had done it. There was no question about that.

But I don't think he would have told me that he couldn't have run the office at the last unless he had had Mr. Hoover because of the material problem of leaks that he had.

So far as the good faith was concerned, I thought they were legal. But apart from that point, moving from the legality of the wire taps to what is called in legal jargon, the good faith defense, a great deal of attention has been put on the Cambodian so-called "secret" bombing which I say was aborted at a great cost of American lives because of a leak.

But I think Dr. Halperin will probably recall the EC 121 conversations. It was one of the first decisions in the administration. The EC 121—I will cover very briefly because I do not want to delay your next question—but the EC 121 involved an American plane, unarmed, being shot down off North Korea, not within the North Korean air space. It came in April, very early in the administration. We considered it not in the National Security Council but again only in an Oval Office meeting with only Secretary of

Defense, Secretary of State, Director Helms, Dr. Kissinger and myself present.

What should be our reaction? Of course, Director Helms gave his assessment that this may be a test of [44] the new administration's will. Without indicating their views, I can only say that as they should have, both Secretary Rogers and Secretary Laird indicated grave concern about any reaction, having in mind the fact that we had enough problems in Viet Nam without becoming involved in something in North Korea.

Dr. Kissinger without again attributing those views because he was only pressing them not so much as his own but ones I should consider, pointed out if we did not react that there might be further actions by the North Koreans testing a new President or by reacting, that might have a salutary effect on the North Koreans.

So the decision I finally made was to take no action except to issue a press statement. You may recall at that time I made a press statement in regard to the fact that we would take no action, but that if it happened again, that the reaction we had planned would be very devastating. As I said, I am not going to refer to the matter further except to say that a President of the United States warns only once. It did not happen again in North Korea. I have since often wondered about that decision.

But I must say that my options on that decision were considerably limited by the fact that if some of that leaked, even the fact that we were having discussions, should we or should we not, it would have been detrimental.

Again, I attribute such leaks as they occurred or dope stories to no disloyalty. They could well have been simply idle chatter that goes on between members of staffs and their friends in the press and the like. You know, when [45] he is out talking, having been on the White House staff, when he is out talking to some members of the press, he wants to prove he is a big shot and he knows everything. Sometimes it gets overblown. But that of course, would not be Dr. Halperin's problem because he

was known as an expert. Nobody would assume that he would try to blow himself up bigger than he was because he was big enough anyway in reputation.

In any event, that is the other situation. However, I should point out that as I mentioned in the Mideast situation in the NSC meeting, it leaked. That did not prove to be particularly detrimental at that point because our negotiations in the Mideast were just beginning. Naturally, we were still in power, if you recall.

Nevertheless, they were significant enough that President Eisenhower brought them very strongly to Kissinger's attention, not so much because of what was leaked but because it did leak and because he said, "Look, if they are going to leak on the Mideast, they are going to leak on everything else so be very careful who you discuss confidential things with."

Now if I could indicate to you why my concerns again grew during that period of time. As I thought of the fact that the EC 121 thing leaked, as I thought of the fact that the NSC had leaked, as I thought of the fact too that some of our official conversations with regard to strategic arms limitations had leaked—all of this is in the public record already—I had to consider some other highly confidential material which had not yet leaked.

[46–49] At this point the witness listed a number of pieces of information which he regarded as highly sensitive and still confidential. Counsel for the parties have agreed to the deletion of this discussion from the deposition as publicly filed.

[50] I am not overstating it when I say that had it not been—even with such leaks as we had—for secret negotiations, there would have been no opening to China. There would have been no new relationship with the Soviet Union, whether that perhaps would be to our interest or theirs or both. I think it is in the interest of peace in the world or will prove to be in the long run, provided we look upon detente as they do, not as an end in itself but as a means to an end. There would not have been an American

disengagement in Viet Nam and the return of our POWs on the basis that we were able to arrange through the Paris Peace Accords in 1973. And there would not have been the progress, limited though it is, that has been made in the Mideast. That is progress in which the United States in addition to having its traditional friendship with and support of Israel, is developing a new relationship with Israel's neighbors, thereby being able to exert influence for a peaceful settlement, if such a settlement can be worked out in that critical area of the world.

All of these initiatives require first a presidential leadership. But, putting the President aside, whoever was in the office, they require above all the most top secret confidential discussions and even with the best of [51] intentions, someone for example who said, "My, isn't it wonderful that we are finally going to have relations with the Peoples Republic of China," and there were many who thought that we should have done it long ago, they would have been rendering an enormous disservice to us by putting it out because then it would have made it impossible to implement.

Now, a couple of things on China that were also important. I discussed it with deGaulle at great length in 1967. Those notes I have because they are pre-Presidential. I discussed the situation with deGaulle agian in my State visit early in my term. I discussed it only in a very oblique way with the Chancellor from the West German Republic, the Federal Republic of Germany, Chancellor Kesinger, who was then Chancellor.

In August of 1969 when I was on a trip around the world, I discussed one day with Ayub Khan of Pakistan and the next day I was in Bucharest and discussed it with Ceausescu, not at great length. Primarily I was discussing with Ceausescu, Viet Nam.

A year later and this is still when we were concerned about security in 1970—and understand we are still a year away from the time we are able to make the announcement and put the thing in process—Ceausescu came to Washington on a State visit. Ayub Khan came to Washington on a

State visit. It was on that occasion and I will not indicate how it happened, but it was on that occasion that I set in motion through a private conversation known only to Dr. Kissinger, the procedure whereby a contact would be made with the Peoples [52] Republic of China which led eventually to the invitation which I implemented when the Chinese asked us to send a representative, after considering a number of people. We implemented it by sending these.

That is enough about the background. I cite these only as examples of the matters that I had knowledge of, matters also that Dr. Kissinger had knowledge of, matters that I don't know whether his staff had knowledge of or not, but they might have.

But, these matters we were desperately concerned about that they should be kept totally confidential and I come back to China. I didn't tell my Secretary of Defense. I didn't tell the head of the CIA. I told Secretary Rogers because he had to know at a certain time. I didn't tell him at the beginning. But I told him at a later time. He had to know. Of course, I had total confidence that he would recognize and he certainly did, the necessity to keep it on a confidential basis.

But in this instance, I am simply indicating that while we must have concern and this suit serves a purpose in pointing up that concern, about investigations for poltitical purposes or for personal purposes or investigations that are too loosely managed, I abhor the first and second and to my knowledge, have never used the FBI for investigating for personal purposes or political purposes.

But insofar as the FBI being used as an investigation for the national security, where the national security was involved, then I felt very strongly, particularly [53] at that time when we had a war on our hands with casualties of 300 a week, we had to deal with the Chinese and with the Russians who could have an indirect affect on the war. We had a Mideast potential blowup, we had our European allies going off in different directions. I felt it was essential

to run and for me first, to get the best advice and therefore be able to talk frequently with my associates.

But secondly, that in getting the best advice, that there must be rules of security that could be properly enforced. I must say that I am glad that it was limited to 17 and did not reach the figure of over 100 which was reached in 1963 during the Kennedy Administration. I don't say that in criticism of him. I must say that he also had problems, as you know.

MR. CHRISTENBURY: Excuse me. If I could consult with the President.

(Consultation off the record by attorneys of both sides.)

THE WITNESS: I should point out I do not want to leave the impression with regard to the Kennedy investigations and the Johnson investigations that all of them were for leaks. Some were. Others were for other purposes. They were all however, in what I call the national security classification, as I understand it or understood it. You will be better able to find that out.

Q BY MR. SHATTUCK: Mr. Nixon, at various points in the statement you have just made you have averred to leaks that actually occurred or that might have occurred and been [54] damaging if they had occurred. Do you have any reason to believe personally that Morton Halperin was responsible for any of these leaks?

A That Morton Halperin was responsible?

Q Yes.

A No. I have no reason. If he was responsible, I would assume that he would have been charged with something. Now I do understand that and correct me if I am wrong, Mr. Halperin voluntarily left the staff and that he did have apparently, some discussion with Dr. Kissinger about leaks and that he remained on as a consultant but consulted only once and probably much less than he was worth for one day. But still of course, being a consultant he was able to have contact, I suppose, with the members of the National Security Council staff. And then he resigned in May, May the 7th after the Cambodia occur-

rence. I think that is a correct assumption about his background, but that is totally from my memory.

Q Did Dr. Kissinger state to you at any point that the reason Morton Halperin left the staff had anything to do with the leaks?

A You wouldn't ask that question, Counsel, if you knew Dr. Kissinger. Dr. Kissinger is not one to come in and say that he was concerned about this fellow or that fellow. He felt that when he came in to talk to the President, he should be talking about those matters that were vital and we had plenty of them in that period.

For example, the period before Morton Halperin resigned. It was then as you recall, on April 30, 1970 and he [55] resigned May 7th, 1970 because of objections as I understand them, well intentioned—other people also objected to it because of my making a very difficult decision which I think was the right decision to destroy the Cambodian sanctuaries which were then being used again for hit and run attacks against our American forces. It was that that I would be talking about, rather than some staff matter.

As a matter of fact, people were to come in and unless it was somebody at a very high level on the staff and say that this one or somebody very high on the staff is leaking information, that would be brought to my attention.

But Kissinger didn't come and say that it was Halperin—I think we should look at some of the others for example. There were several people for example who at the time were surveilled who are still on the staff, not of the NSC but in the State Department. One went to China with him. Another I consider is the hardest line Kissinger —not only Kissinger supporter, but supporter of basically the administration—was considered to be hard on the policy as to ending American involvement in Viet Nam. Why he was tapped obviously bears on my earlier point that Dr. Kissinger I think, was bending over backwards to not finger anybody and say in all honesty that this person or that person or this person has discussed a matter and

might have had access to the material and might therefore have leaked it.

But without so charging and he never did and I never did. And he told me that before any of these people.

Q I believe you testified that you understood [56] that Dr. Kissinger had had conversations with Dr. Halperin about leaks prior to Dr. Halperin's resignation; is that correct?

A Yes.

Q And what was the basis of your understanding of the conversation with Dr. Kissinger?

A No. I talked to Counsel, my Counsel. Counsel said there was something in the record about that. I think that was the basis of that. When I say I talked to Counsel, I think Dr. Kissinger gave some sworn interrogatories. But, possibly you have not gotten around to them yet.

Q But it was not your understanding that Dr. Kissinger—this is a question—Dr. Kissinger had had conversations with Dr. Halperin about being the subject of leaks or being the source of the leaks prior to Dr. Halperin's resignation? You didn't understand that there had been a conversation between Dr. Halperin and Dr. Kissinger about Dr. Halperin's being the source of the leaks?

A No. I wanted the understanding that I—frankly, I had no conversation with Dr. Kissinger that I can recall about it. What I am referring to is that I was trying to refresh my recollection from it. I understand that Dr. Kissinger indicated he did talk to Dr. Halperin before Dr. Halperin resigned. I guess I must have assumed he must have talked to him about the leaks. Possibly, I may have assumed incorrectly. But let the record show whatever Dr. Kissinger said.

Q That was based on your reading of [57] Dr. Kissinger's Answers To Interrogatories?

A No, it was based on what my counsel told me.

(Brief recess.)

THE WITNESS: I will read for the benefit of the Reporter from Dr. Kissinger's Interrogatories. He said,

> "I most certainly discussed the Cambodian bombing leak with President Nixon and undoubtedly discussed it with my associates who were then with me at Key Biscayne, including Messrs. Halperin and A. Before I telephoned Mr. Hoover on May 9, I had discussed the leak with the President who requested steps be taken urgently to find the source of the leak. We were principally concerned the leak would provide excuse for North Viet Nam to extend its operations in Cambodia. As nearly as I can recall, I think I reported to Mr. Halperin that Mr. Hoover had suggested to me that one of them might be the source of the leak."

Q But you had no contemporaneous knowledge?

A No.

Q Was that based on contemporaneous knowledge, Mr. Nixon?

A Well, you will have to ask Mr. Kissinger.

Q But it is not stated as your contemporaneous record?

MR. CHRISTENBURY: If the record would reflect that [58] the President was quoting from the Response of Dr. Kissinger to Interrogatory No. 36 propounded to him by the Plaintiffs in this action.

MR. SHATTUCK: Mr. Nixon, if we could move on a little more quickly through some of the questions that I am going to pose now, not that I am not inviting you to give as extensive a response as you may wish, but it may be that you have covered a great deal of the material that you wish to put in the record.

Q Did you discuss the procedures to be followed by the FBI in conducting these wire taps with either Director Hoover or Attorney General Mitchell?

A Yes. I have already described that.

Q Did you discuss what records should be kept by the FBI?

A No. I assumed the FBI, having done it for years, had a system and that they would follow whatever procedures were proper.

Q You did not give any instructions not to follow the procedures that they had previously followed?

A No. I did give instructions, which I assume Mr. Hoover had received from previous presidents as well, that information should be closely held. The reasons for that were those that I had previously given you, that it would affect morale within the Department and also run the risk of leaks to the press and also our relations with foreign governments.

Q Did you give any instructions with respect to the prospective length of time that those wire taps would [59] be on?

A No. I left that to Mr. Hoover's discretion, he being an expert in this field. I felt that he would know whether the taps were producing information that was useful and would remove them or expand them to include others providing the Attorney General gave his approval where necessary.

Q Were you aware of an internal rule in the Justice Department and the FBI concerning a 90-day reauthorization of national security wire taps?

A I was not then. I am now. If I had been aware of it, I would have expected him to follow it. I assumed that Mr. Hoover was following and Mr. Mitchell as well, the rules to be laid down because we did discuss, as I pointed out in considerable detail, both the legal and the procedural aspects of this matter with Mr. Hoover and with Mr. Mitchell in April. I assumed that they would follow my directions. But, I left it to—I considered that in Mr. Hoover's case, him being very experienced and in Mr. Mitchell's case, a very good lawyer, that they would be careful to follow whatever the law required.

Q Did you discuss the criteria for terminating a particular wire tap? What criteria would be applied by who-

ever would be in authority to determine the type? We can move to that next.

A The authority for putting on a tap, I should point out could only be approved by the Attorney General. Let me be very clear that Dr. Kissinger, who furnished names to [60] General Haig, I assume could not have done so. And Mr. Hoover could suggest names as result of his investigations. But as far as the placing of the tap concerned all of them, it had to be approved by the Attorney General. It is my understanding that all were approved by the Attorney General. Now as far as the control thereafter, there was no control by Dr. Kissinger as to when the tap should be removed or for that matter put on. I of course, would have been greatly influenced as later I was, by a recommendation Mr. Hoover made or one of his associates as to making taps or putting them on.

But we did not discuss with Mr. Hoover the taps to say put them on for so many days and then take them off. But I again however say that Mr. Hoover had guidelines which I think were even more important than a day-by-day authority or time-limit authority.

I said that I didn't like the idea of tapping because of the various detrimental effects in the event of public disclosure and et cetera. What I wanted was taps only where necessary. By implication, that would mean where they were no longer necessary, I would expect him to recommend they be removed.

Q What were the guidelines to which you just referred? Were those written guidelines?

A I have covered that. Would you like to have the Reporter read it back to you?

Q Are they written guidelines?

A No. That is a different question. I didn't mean to be facetious. The guidelines I will cover again. The [61] guidelines—

Q You can just state whether they were in written form, if you wish.

A They were not in written form. We had a discussion with Mr. Hoover and Mr. Mitchell. I said that as far as—let me point out, as far as investigation and we are using the word "tap," here and it goes further than that.

As far as Mr. Hoover's investigation, Hoover's investigation could mean one of three things or all. One would be a name and field check of the individual. Two could be physical surveillance of the individual and three could be a tap of the individual.

In Mr. Hoover's case, I said to conduct investigations of whatever individuals whose names come to your attention.

I have already indicated to you how names got to his attention. That is the basis and the basis of the investigation. I said conduct an investigation, "And you will be conducting investigations in those cases where an individual has done something in his background which indicates a tendency to leak."

Second, to an individual who had access to the material.

Three, an individual who Mr. Hoover found in his own investigations might be a possible leaker. Those were the three guidelines that were to be applied.

Q Now with respect to termination of these taps and criteria to be applied and when to terminate, did you [62] provide or did you instruct anyone else to provide Mr. Hoover with guidelines as to how to terminate and what criteria to apply?

A No. I gave no written instructions. But my attitude was well known. It was often stated because I was often questioned in press conferences about how many taps we had and the numbers and that sort of thing compared with previous administrations, as you will recall.

My guidelines, orally expressed, were then well known within the administration and well known by Mr. Hoover. They were that a tap should be installed when necessary with justification and when not necessary, should be removed. But I did not write it out on a piece of paper. I didn't have to write it out for him.

MR. CHRISTENBURY: Mr. Shattuck, excuse me.

(Brief off-the-record consultation between Counsel for both sides.)

THE WITNESS: I should incidentally qualify, after consultation with Counsel, in the guidelines when I said if a guideline indicated a tendency to leak, I should expand that by saying a tendency to leak would be information in the file indicating that an individual was perhaps either sloppy or possibly, in some cases, intentionally failed to disclose his travels abroad, conversations he had and et cetera. That kind of information. That all bears on a tendency to leak.

Q How was Mr. Hoover to determine or the FBI, what information was pertinent or necessary to intercept and [63] continue on a wire tap?

A I think anyone who knows Mr. Hoover and the FBI knows that the answer to that question is that he never made that determination. The Hoover reports through the years always have the saving clause at the end that this is only a report of information and we draw no judgments. He would never make any recommendations. That goes clear back to the time that I worked with him many, many years ago on a case when most of you were not born. You weren't even born then.

Q But you have testified that taps were to remain on as long as they were necessary. How was it to be determined when they were no longer necessary?

A That could come either from a recommendation from me or Dr. Kissinger, after consulting with me, that if we weren't getting information that was worth the time, or from Mr. Hoover. I should point out Mr. Hoover, in his early years was not as sensitive about tapping and surveillance and so forth, particularly during the years of the Cold War and et cetera. The FBI was applauded for some of its covert activities. When the CIA was applauded, as you know for saving Italy in 1947 and now it is being condemned for trying to save it, as a result of the unconscionable and utterly irresponsible actions of the Committee of Congress with regard to possible United States support of NonCommunist parties in the Italian elections.

But Mr. Hoover, while I was President, was coming under increasing attack from the press and despite the fact that he is considered to be and was always considered to [64] be a martinet with regard to his staff, which he was, he was very sensitive to public relations. As the press began to criticize him and the taps and a study was being made in Princeton, one of the smaller of the Ivy League Colleges and a very good one, too, after Woodrow Wilson made it that way, even though he never attended—Mr. Hoover being sensitive about that, did not want to do tapping first any more than was absolutely necessary and second, if there was any significant danger of the information being leaked to the press, he would be subject to it. So, we didn't have an unwilling administrator of our program. I again emphasized that if he reached conclusions and he did on occasions, that he felt that some tap should be removed, I of course would take note of his judgment and give it great weight. I think as a matter of fact, it was in July of 1970 that Mr. DeLoach pointed out some of the taps should come out. My recollection may be incorrect.

Q We will get to that.

Did you at this time give any instructions to the FBI or Mr. Hoover about conversations not to be recorded, not to be intercepted on these wire taps? For example, the attorney/client conversations or husband/wife conversations or conversations about political matters unrelated to leaks? Did you give any such instructions to Mr. Hoover?

A No. I realize the ACLU is apparently not concerned about that kind of conversation in my own case, but apparently you are in this case; is that correct?

[65] Q I am not sure that we aren't concerned about it in any case in which it comes up, Mr. Nixon.

A Are you concerned? You are concerned about the revelation of private conversations between husband/wife and others. You don't believe that it should be publicized or should be public? What is your position?

Q My question stands.

A No. This is very important to me to understand the question because of your long tradition of a single standard.

Q I am talking about wire taps at the moment and the law provides that wherever possible, the interceptions that occur shall be minimized. My question is whether or not in your conversations there were any instructions that were given with respect to minimization?

A No. The only instructions were the instructions I gave generally to Mr. Hoover. Our interest was in leaks. We had no interest in political matters. We had no interest in personal matters. I was quite aware of the fact that where wire taps are concerned, that conversations as in the case of my taped conversations where the ACLU takes the opposite position which you presently now are advocating, conversations inevitably intermingle, a personal conversation with a conversation that may deal with substantive matters of very great importance. As far as the work load in the White House was concerned, I would have certainly instructed Mr. Hoover to include first only the tapping to begin with and that only the report should deal with that specific thing [66] bearing specifically on a leak.

The difficulty is the field officer with the earphones on is listening to something apparently and through the years, has not felt that he could or should make that judgment. The FBI was bending over backwards, never knowing what might appear to be a very casual phone conversation about setting up a date for a girl friend or a boyfriend or what have you, might lead to some other source of contact.

As a matter of fact, the amount of material included should be as limited as possible. But, it is apparently very difficult to do that.

Q The FBI witnesses in this case have testified that they were not informed as to the nature—I believe the record will reflect this—of the interceptions that were to be conducted. Therefore, I presume your statement that no instructions with respect to minimization were given is consistent with their testimony.

MR. CHRISTENBURY: Excuse me, Mr. Shattuck. I don't want to create an administrative problem for you. I am a little hesitant in referring to portions of the record without the witness having had an opportunity to see those. If they are specific references in a deposition, I would like you to refer the witness to it.

THE WITNESS: Let me answer the question by saying that whatever the FBI agents have testified to, they certainly are testifying to the best of their recollections, as I am. I am simply saying that I gave the instructions to Mr. Hoover with Mr. Mitchell present and he was to follow the same [67] procedures he had previously.

But also, I indicated my own concern about keeping as closely held as possible, keeping it from proliferating as much as possible. I found that he totally agreed with that. It was perhaps for other reasons, but I assume from that, that they would be handled properly.

Q Did you, during your discussions in this early period of wire taps, form a belief about the general utility of wire tapping as a way of investigating leaks?

MR. CHRISTENBURY: Excuse me. I would have to interpose an objection at this point. I think the general utility of wire tapping—I am not sure I perceive the relevancy as it relates to our case.

Now as to Dr. Halperin's surveillance, I think that is a legitimate question within the limit. I appreciate your point, but I would have to interpose an objection.

MR. SHATTUCK: I would be happy to limit the question to Dr. Halperin's case. I would note for the record that this is one of the principal areas of questioning set forth by Judge Smith, the grounds for the initiation of wire taps, as opposed to some other form of investigative method.

Q Did you form a judgment as to the utility of the wire taps to be applied in Dr. Halperin's case, following the suggestion of your Counsel that we limit it to Dr. Halperin's case.

A As to whether it was useful or not?

Q Yes.

A I have never discussed to my recollection, what [68] the taps on Dr. Halperin indicated. I think the word that the lawyers use was the "thrust," thereof. I don't know whether it was—

Q My question is really limited to the period prior to the initiation of the tap. Perhaps you don't wish to elaborate on the answer.

MR. CHRISTENBURY: My point in this regard is as to the proper foundation. Probably I got out of sequence there. The question I think, appropriately asked is whether the President recalls ever reviewing any of the product of Dr. Halperin's surveillance and that would in itself, I suspect, answer the question as to his determination as to the usefulness or lack thereof.

THE WITNESS: I have already answered that indirectly by saying I don't recall Dr. Kissinger ever discussing these taps with him. Let me emphasize to Counsel that from the time that I think was the second day after I was in office, that I received my first communication from Mr. Hoover containing what was obviously the thrust of a tap on a British correspondent.

I didn't even read through the four or five pages. I called Dr. Kissinger. I said, "Here, you know this fellow."

I said I didn't want to see these things.

Q BY MR. SHATTUCK: Turning to the period after the initiation of this wire tap, when did you first become aware that a wire tap had in fact, been installed on Dr. Halperin's telephone?

[69] A Shortly after we were in Key Biscayne.

Q Do you recall receiving reports about the thrust of the Halperin wire tap?

A No.

Q About other wire taps?

A No. I recall as you may remember we were in a rather difficult period then. We moved into the Cambodian sanctuaries May 1st, 1970. For three months my concern

was primarily on that area. So in that three-month period, I paid very little attention to anything of this sort.

I cannot recall any discussions. It would only have been I think, with Dr. Kissinger at that point. My conversations with Dr. Kissinger or with Mr. Haldeman at a later point when he had exactly the same responsibility as Dr. Kissinger and carried it out in the same way. But I don't recall anything about what it was they found out about Dr. Halperin.

Q You did state that you became aware of the fact that there was a tap on Dr. Halperin's telephone shortly after its initiation on May 9, 1969? How did you become aware? How was it brought to your attention, if you recall?

A I think Dr. Kissinger told me.

Q Did you initially receive all reports from Dr. Kissinger about the wire taps in place?

A I can recall none.

Q Certainly not about this case?

A My only concern was whether they had found out who was leaking. If he had found out who was leaking, he would [70] have told me immediately and he would have been fired. In this case, he never came in and said that.

As far as anything else that might have been on a tap, I never recall any discussions by Dr. Kissinger as to what else was on it, assuming that he was on it.

Q The records provided to us in discovery in this case indicate that beginning on May 28, 1969, summary letters from the FBI addressed to you, were sent to the White House. They were summarizing the conversations overheard on Dr. Halperin's tap. Do you recall receiving any of those summary letters?

A No. I don't recall reading any of them. It is possible they might have been received.

Again, I should point out the procedure that I had set up. You see, with Mr. Ehrlichman who had charge of personnel and received the summary letters and the applications from people for positions and with Dr. Kissinger

when I had discussed the British correspondent material which came in before our tap program began, it was that I did not want to see this material and to have somebody else evaluate it. If there was anything I needed to see, to let me see it.

As far as the summary letters were concerned, they of course would not come directly to my office. It is my recollection that they were delivered to Counsel's office and Mr. Ehrlichman, who was Counsel at that time and also the man in charge of analyzing personnel—and I don't recall Mr. Ehrlichman bringing any to my attention or any information to my attention about any of those taps in that period of time.

[71] MR. CHRISTENBURY: Excuse me. I don't want you to lose your train of thought. I believe the witness said that Mr. Ehrlichman received similar letters with regard to applicants and I guess the term "summary letters" has become a term of art in this case. I believe Mr. Ehrlichman was seeing basically reports on applicants.

THE WITNESS: Well it is basically the same thing. It is sort of a raw report. This is a report in a raw file or whatever you want to call them. But whatever it is, it is the same kind of material in some instances.

But I should point out that I am sorry. It is just as well Counsel has allowed me to make the record clear. It would not be fair to characterize or accurate to characterize the summary letters he received there with the files that he received with regard to applicants because the files on applicants should be the result of field investigations and would not involve taps unless taps happened incidentally to have come into it another way.

Whereas, summary letters did involve both field investigation and surveillance and taps. I think that point should be made.

Q But did Mr. Ehrlichman receive the summary letters we are discussing which are the reasons for this case, that were addressed to you?

A It is my understanding that he did. You will have to ask him if he did. But, they naturally were not brought in and handed to me.

Q And I believe you mentioned the personnel [72] officer for the NSC as well. Would that have been Mr. Russell Ash, that you recall?

A I have no recollection.

MR. CHRISTENBURY: Would you excuse me? If I could just consult with the witness.

(Consultation off the record between the witness and his attorneys.)

Q BY MR. SHATTUCK: Who else on your staff in the White House knew of the existence of these wire taps at this point in time?

A Mr. Haldeman.

Q I mean beginning in May of 1969.

A And Mr. Ehrlichman.

Q Any other persons on the White House staff?

A Not unless they told them. I mean, they may have informed some other subordinates. But, not that I knew about. And, General Haig, of course.

Q Did anyone outside of the White House except for the FBI, to your knowledge, know of the existence of these wire taps at that time?

MR. CHRISTENBURY: Do you intend to include Mr. Mitchell?

MR. SHATTUCK: Pardon me. I mean to exclude Mr. Mitchell as well.

THE WITNESS: I cannot say for sure that anybody did.

Q BY MR. SHATTUCK: Did Mr. Haldeman or Mr. Ehrlichman know of the existence of these taps from the beginning? In other words, from May of 1969, to the best of [73] your recollection?

A The best of my recollection is that they knew it soon thereafter. I mean, they knew more than I did what hour and what day and what have you.

Incidentally, with regard to names, I am not sure they knew about that. I am just simply saying that a program was going on of a highly classified nature where Mr. Hoover was attempting to trace down the leaks. Of course, I was asking them to do their best to help him out. I mean, in their own shops.

Q Do you recall meeting in the White House after the initiation of the tap to discuss the wire tap program or any specific wire tap in any way?

MR. CHRISTENBURY: Excuse me. I don't want—I want the President to be as responsive as he can. I appreciate the thrust of your question. But I think we will have to narrow the scope of his answer to this particular case on Dr. Halperin.

THE WITNESS: I recall no meeting about Dr. Halperin in the White House. His name could have come up in a meeting, but I don't recall it. I don't mean to downgrade his importance, you understand.

Q BY MR. SHATTUCK: Mr. Ehrlichman has testified in this case that he attended such meetings and took notes which he also testified are among the Presidential papers.

A Such meetings about Dr. Halperin?

Q About the wire tap program.

A Just a moment, Counsel. You are straying from what you said. You said you were going to limit yourself, too. [74] We are talking about Dr. Halperin. Ask me about Dr. Halperin. Did Mr. Ehrlichman say that he sat in on a meeting at which Dr. Halperin was discussed?

Q What I wish to do is to read you Mr. Ehrlichman's testimony and ask you whether you agree with it.

A Does it relate to Dr. Halperin?

Q I will read you the testimony and you can answer the question. If you believe it does not, then you can so testify.

This page 9 of the deposition of John Ehrlichman taken in this case.

A Can you furnish me a copy?

Q Certainly.

MR. SLOCOMBE: I think for these depositions it is not necessary to make them an exhibit. They are already in the record.

MR. SHATTUCK: But certainly, for your convenience, Mr. Nixon—okay Mr. Slocombe now?

MR. SLOCOMBE: "Q Did you discuss the contents of these documents with the President at any time up until May of 1970?

A Yes.

Q Would you describe those conversations?

A Not specifically. I do recall some conversations generally between the President and someone else which I attended relating to this ongoing surveillance of [75] suspects.

Q Did you take notes of such conversations?

A Undoubtedly.

Q Those notes, would you know where they are?

A In Mr. Nixon's possession."

Q BY MR. SHATTUCK: Do you agree with that testimony?

MR. CHRISTENBURY: I don't think we have the same—are you reading from page 9?

MR. SHATTUCK: The top of page, lines 3 through 13.

MR. CHRISTENBURY: I see.

THE WITNESS: Yes. I see there were discussions. When I had time, I would discuss generally the problem of leaks with Ehrlichman and Haldeman and Kissinger, sometimes together and sometimes separately.

Q BY MR. SHATTUCK: What was the nature of those discussions?

A How do we stop the leaks? What more can we do? What are we finding out?

Q Did any of those discussions relate to Dr. Halperin's wire tapping?

A I do not recall any relating to his wire taps.

Q Did you discuss the significance or the lack of significance of the information learned to date about the wire taps and particularly with respect to Dr. Halperin's wire [76] tap?

MR. CHRISTENBURY: For the record, I will have to interpose an objection to the first part of the question. I would certainly permit the witness to answer as to the latter part relating to Dr. Halperin.

MR. SHATTUCK: If I may, before the witness answers I would like to refer to Judge Smith's Opinion which does say that the plaintiffs are entitled to discovery of the grounds for the initiation and continuation of the wire tap and to the extent that those grounds are similar with respect to other wire taps we would press the question. If you would wish to instruct the witness not to answer with respect to the general nature of those discussions, it is your right to do. But, we would certainly press the question.

MR. CHRISTENBURY: I understand your position. I think we have tried to strike a good balance, here. It is as good a balance as we can by permitting the witness to be as responsive as he can in those areas, particularly relevant. But I do feel that questions going to the surveillances generally unrelated to Dr. Halperin are simply not relevant. I would have to instruct the witness in that regard.

Q BY MR. SHATTUCK: on June 4th, 1969, General Haig prepared—

MR. SLOCOMBE: This will be Exhibit A.

MR. SHATTUCK: Yes, Plaintiff's Exhibit A.

(Whereupon the document referred to was marked Plaintiff's Exhibit A for identification by the Notary Public and [77] is attached hereto.)

MR. SHATTUCK: This is a memorandum entitled "Talking Points For Meeting With J. Edgar Hoover." It is a memorandum for Mr. Kissinger. We would like to show you this memorandum I would like to read into the record paragraphs 1 and 5. Paragraph 1 reads:

"Express your appreciation to Mr. Hoover and Mr. Sullivan for their outstanding support in recent weeks in uncovering security problems within the NSC staff. Inform Mr. Hoover that you have discussed these problems in detail with the President (and with Messrs. Haldeman and Ehrlichman.)"

Paragraph 5 reads:

"Ask Mr. Hoover if he has any additional information or guidance which he feels would be helpful in this very difficult situation. Specifically, you might inquire about the requirement for prolonging the taps, making it clear that the President wishes to terminate them as soon as possible. (I think in the case of Halperin and (deleted) that they should be kept on for at least another two weeks so that a pattern of innocence can be firmly established."

THE WITNESS: I would like to reply to Counsel's question first, because Counsel asked me nine different times with regard to my instructions with regard to termination.

If I could, Counsel, please direct your [78] attention to paragraph 5 of the memorandum which is, "Ask Mr. Hoover if he has any additional information or guidance which he feels would be helpful in this very difficult situation. Specifically, you might inquire about the requirement for prolonging the taps, making it clear that the President wishes to terminate them as soon as possible."

If you want to ask that again, your question is well taken.

Q BY MR. SHATTUCK: Do you agree with that statement? Does it reflect the substance of your conversation?

A It speaks for itself. Next question?

Q Thank you, Mr. President.

A Were you aware of this when you asked me those previous questions? Were you aware of this memorandum?

Q Of course I was.

A Why did you ask the questions?

MR. CHRISTENBURY: Excuse me. I would like to know if we could take a short break.

THE WITNESS: It is all right. We are getting quarrelsome for no reason at all.

Q BY MR. SHATTUCK: Did you do anything to implement these discussions that reflect that you were concerned about prolonging the taps and you wished to have them removed at the earliest possible date?

A Exactly this kind of memorandum that I referred to, Counsel. I understand why you have to press me on the other matters because what you are trying to find is whether or not there was something specifically in writing as [79] to what conversations took place and so forth. All I can say is that I was confident that I had made it cyrstal clear to all members of the staff that the program was to be initiated first on the narrowest possible basis and with the greatest possible confidentiality and terminated as soon as possible. I think that answers the question. I don't mind being asked it again eight more times.

Q We thank you for the answer. I appreciate the answer again.

A Again?

Q Nor will I ask the question again.

A No. You can ask that. I have no control over the deposition, as you know.

Q Were you aware of any specific information obtained from the Halperin tap that established who was responsible for the leaks that were in question at the time the tap was initiated?

A Not that I can recall. I again refer Counsel to earlier references in my testimony where it says that I asked Mr. Hoover for his views. This is Haig's memorandum as to how he should proceed with Halperin who has been involved in incidents and indiscretions and who obviously has a reputation for liberal views, but who has yet to be firmly linked with a security risk.

I think that tends to bear out what I said earlier that I had heard of Mr. Halperin, clearly apart from the wire tap program and before again from people like Senator Goldwater and others who objected to his liberal views.

[80] What the word, "indiscretions," is referring to, only Mr. Halperin would be able to testify. I am sorry. I don't mean to imply that there were any, but I know of no—I can recall no discussion, Counsel, with regard to what the word, "indiscretions," means.

Unless it referred as I said earlier, to conduct by Mr. Halperin not involving a security leak, but maybe sloppy work with regard to very general and broad conversations and reporting this and so on and so on. That I would not know. But that must be in the record. But, I do point it out here that as far as the tap was concerned, it does not specifically—this memorandum indicates that as of the time of June 4th, ten days after the tap had been installed, they had nothing linking Dr. Halperin to a security leak. I am sounding like his attorney, now.

MR. CHRISTENBURY: Off the record.

(Discussion off the record.)

Q BY MR. SHATTUCK: I believe you can answer this question probably with reference to your prior testimony. But the question has not been asked. Did you ever discuss information indicating that Dr. Halperin was responsible for the Cambodia bombing leak?

A I have no recollection of that, no. I—to be candid with you, I would have been advised that Dr. Kissinger would have discussed the Cambodian bombing with Dr. Halperin because Dr. Kissinger was supposed to have kept that closely held and I didn't understand that Dr. Halperin was in what the military would call the chain of command within the NSC staff. [81] Understand that I am—but that does not refer however to other leaks which Dr. Kissinger said there were 21. As far as the Cambodian bombing leak, I would have been surprised that he would have discussed it with Dr. Halperin.

Q So you had no reason to believe that Dr. Halperin would have had access to the Cambodian bombing information?

A I have no reason. I should also point out that those on whom the surveillance was established after the Cambodian bombing leak would not necessarily have been ones who were privy thereto or thought to be privy to that information because what the Cambodian bombing leaks did and what the investigation was undertaken or was directed toward solving was not just that leak. After all the previous leaks, it finally triggered the administration to act. It was much too late, perhaps. Perhaps a course of preventative action and we wouldn't have had the previous leaks.

If for example at the time that President Eisenhower on February the 4th warned Kissinger that he would either have to cut down the size of his staff or fire somebody if they were leaking—and apparently President Eisenhower's conversation with Dr. Kissinger was quite eloquent over the phone from what I have heard secondhand, he could be right down to earth in these talks sometimes and so can I—but in any event, had we followed that recommendation, the Cambodian bombing leak might not have occurred.

I am simply surmising. But my point is that connecting the names that went into the Cambodian bombing leak [82] with the taps would not be fair or might not be accurate because we were concerned about all leaks.

(Whereupon a luncheon recess was taken, the deposition to be resumed at approximately 2:00 o'clock p.m.)

(Whereupon at approximately the hour of 2:00 p.m. the deposition of RICHARD M. NIXON was resumed at the same place, the same persons being present.)

EXAMINATION (Resumed)

BY MR. SHATTUCK:

Q Mr. Nixon, I would like to return just briefly for one question or series of questions to the role of the Attorney

General, Mr. Mitchell, in the authorizations of wire tapping that were requested by Dr. Kissinger.

Mr. Mitchell has testified and I will read to you that portion of his testimony and will provide you with a copy, that he was instructed by you to authorize any taps requested by Dr. Kissinger.

So that there may be no confusion about that, I will read you his testimony and then simply ask you whether you agree with it. It appears on page 49 of his deposition. This is line 7:

> "Q That is, your instructions from the President as you understood them were [83] that Dr. Kissinger would provide names or a member of his staff would provide names for the FBI, and that when he received such a name you are under instructions from the President to put on such a tap?
>
> A That is correct."

Do you agree with Mr. Mitchell's testimony in that regard?

A I think I would agree, but with a qualification. My instructions to Mr. Mitchell and Mr. Hoover who was present when I talked to Mr. Mitchell as I have already indicated back in April, were that our goal was to find the leakers and stop them, if we could. Second, that investigations should be conducted, and I said that there could be three levels of investigations, the third level being a tap. And whatever was necessary or considered necessary by Mr. Hoover should be undertaken.

I did not intend—in my conversation with Mr. Mitchell, he might have interpreted it that way—but when Mr. Hoover called—I mean when Dr. Kissinger might call Mr. Hoover or General Haig which would be more likely in the chain of command—it would go to Mr. Sullivan and give him some names to say please tap so and so and so and so because in some instances I don't know what the procedures were that were followed. In some instances the FBI might have determined and they have a right to determine that a tap was not necessary, that surveillance would be

enough. But it was not a specific direction that Kissinger had the authority to order [84] taps on people.

I had the authority, of course. The Attorney General had the authority. He approved them all. As far as Kissinger was concerned, it was Kissinger's responsibility to furnish the information to those who had the responsibility for implementing the policy, to furnish information as to individuals who potentially might be leakers or lead to leakers. That is the way I would interpret what I told Mr. Mitchell.

Q Was there anything further that Mr. Mitchell should do if he received a name from Dr. Kissinger or Colonel Haig to determine whether or not such a wire tap should be authorized by the Attorney General?

MR. CHRISTENBURY: I think you said Mr. Mitchell. Did you mean Mr. Hoover?

MR. SHATTUCK: No, I meant Mr. Mitchell. It was Mr. Mitchell.

MR. CHRISTENBURY: Just so I can understand, you are asking if Dr. Kissinger submitted names directly to Mr. Mitchell, rather than submitting them to the FBI and the FBI submitting them?

MR. SHATTUCK: I am not talking about anything more than Mr. Mitchell's testimony.

THE WITNESS: I understand—

MR. CHRISTENBURY: I thought the testimony reflects that Dr. Kissinger would provide names or members of his staff would provide names for the FBI and that when he received such names under instructions from the President—

THE WITNESS: I believe that what Mr. Christenbury has [85] indicated was the procedure. The procedure was that Dr. Kissinger or his deputy, General Haig—then Colonel Haig—would submit the name, or names rather, to Mr. Hoover directly, eventually it was delegated by Mr. Hoover to Mr. Sullivan who was in charge at that time.

Then the Hoover office would from there take the responsibility. But before they could institute a tap, they had to have Mr. Mitchell's approval. Now whether there could have been incidents in which Colonel Haig talked directly to Mitchell or where Kissinger talked directly to Mitchell, I do not know. It could have been. I do not know. But, it would not have been the usual procedure.

Q BY MR. SHATTUCK: With respect to the role of Dr. Kissinger in determination of these wire taps, I would like to show you a document which will be marked as Plaintiff's Exhibit B. It is a document dated September 15, 1969. It is a memorandum from W. C. Sullivan to Mr. C. D. DeLoach. It is an FBI memorandum.

(Whereupon the above described Xerox copy of a one-page memorandum dated September 15, 1969 was marked as Plaintiff's Exhibit B by the Notary Public and is attached hereto.)

Q BY MR. SHATTUCK: The second paragraph of this memorandum reads:

> "At the request of Dr. Kissinger's office, we have surveillances in effect at this time on blank and Mr. Morton Halperin, blank and blank. Colonel Alexander Haig of [86] Dr. Kissinger's office has indicated that Dr. Kissinger desires all surveillances discontinued except those on Morton Halperin and blank."

Before asking you a question about that, I would like to read you Mr. Mitchell's testimony about his understanding of Dr. Kissinger's role in determination of these wire taps and ask you whether you agree with it.

At page 58 and continuing to page 59 of this testimony in the deposition, Mr. Mitchell was also shown this document and was asked the following question:

> "The second paragraph says, does it not, 'According to Alexander Haig, Dr. Kissinger has now advised that he desires all such surveillances installed at his request discontinued except the ones with reference to Mr. Halperin and (name deleted). Accordingly, the surveillances on apparently two names are being discontinued.'

"Does the description in that paragraph of the control of the continuance of these wire taps correspond to your understanding at the time that this was up to Dr. Kissinger to decide when the wire taps came off?

"A I think I would have to answer the question the way you put it, yes. Dr. Kissinger having initiated the taps, that would be his determination as to when [87] they came off, yes."

A I think that would appear to be a difference of opinion as to who would determine as to when taps would be put on or surveillances described in the paragraph and as to when they would come off and it can be explained in this way, as I pointed out earlier, it was Dr. Kissinger's responsibility to furnish to the FBI the names of individuals who, under the guidelines that I have previously outlined, might be possible prospects for leaking information. Needless to say, when Dr.—If at any time Dr. Kissinger, after having evaluated the taps or other surveillance material over a period of time or because of the problems of leaks having receded in importance, Dr. Kissinger had then reached a conclusion that they were no longer necessary, it would be his obligation to furnish that information to Mr. Hoover and Mr. Hoover would then take them off.

I should point out however, that this is consistent with the way that I understood it and directed that the program be set up, that Dr. Kissinger should furnish the names and Mr. Hoover would institute the surveillances and furnish the fruits or results of the surveillances to Dr. Kissinger's office and that they would be evaluated and Mr. Hoover, in addition of course would recommend additional names, if he felt it was necessary or advisable because of his own investigations.

I think that Mr. Hoover under these circumstances therefore, would give very great weight to Dr. Kissinger's recommendation that a tap be removed, just as [88] he would give very great weight to a recommendation that a surveillance be instituted.

It does not indicate in my opinion that Mr. Hoover was simply acting as Dr. Kissinger's agent because in the final

analysis, the surveillances had to be approved by the Attorney General and it would be therefore a combined judgment with the final decision being made by the Attorney General. It was Hoover who removed the taps. I mean, he would discontinue the surveillances and issue the order that they be discontinued, rather than Dr. Kissinger.

Q Was it your instruction that Mr. Hoover should also give very great weight to any recommendation by Dr. Kissinger that a tap be continued when the FBI might not regard it as being productive?

A Well to be specific, I do not recall an instance in which Mr. Hoover indicated that a tap was not productive and that it should come off and in which Dr. Kissinger insisted that a tap be retained. If you have one, I will be glad to answer a question on it.

Q We do not know precisely the circumstances under which the September 15 memorandum was written, of course, for purposes of our questions in that regard.

But it is certainly possible that the wire tap on Dr. Halperin was continued specifically at Dr. Kissinger's request and it may well have been notwithstanding a determination by others that it was not productive.

I would ask the question therefore that if you have any information with respect to the productivity or [89] nonproductivity of Dr. Halperin's tap at that time, we would certainly appreciate it if you would supply it.

A I will give you any information that I know of. Dr. Kissinger did not discuss with me, that I can recall, any recommendation that the Halperin tap and X's tap be continued. I would say though, based on my long association with him and knowing that he, just as I, did not frankly like the idea of taps on his own staff for a number of reasons that Dr. Kissinger must have had, reasons he did not discuss with me. I would say also that if Mr. Hoover had believed that Halperin's tap had been—to use your term—"nonproductive," Mr. Hoover would certainly very likely I think have raised the matter with the Attorney

General who would I think, question Dr. Kissinger's deputies or I think would even take it up in this case with Dr. Kissinger or even with the President. That did not happen as far as I was concerned with it. Whether it happened on another level, I don't know.

Q The September 15 memo which is Plaintiff's Exhibit B, in the fourth paragraph reads as follows:

> "At the request of the Attorney General, who instructed that reports in this connection be sent to him and to the Honorable John D. Ehrlichman, Counsel to the President, we have a telephone as well as physical surveillance on blank. By memorandum dated 9/8/69, we advised the Attorney General that these surveillances were producing no information of pertinence and asked if [90] they should be discontinued."

Does the standard of producing no information of pertinence reflect the standard for discontinuing surveillances as applied by Dr. Kissinger?

MR. CHRISTENBURY: Excuse me.

(Consultation between Attorneys for the President.)

THE WITNESS: Could I ask whether this memorandum refers to the case in question?

Q BY MR. SHATTUCK: Excuse me. The memorandum of 9/8/69?

A The one you just quoted me.

Q I don't believe it has been produced in discovery to us. The one that is referred to in the September 15th memorandum—

A That is the one that says except those on Dr. Halperin. So far as the memorandum is concerned, I should point out that this is a memorandum from Mr. Sullivan which I do not have before me. What Dr. Kissinger's recollection is on this—sometimes, as you know, people's recollections vary, depending upon their viewpoints and their information.

I would have no comment that I think would be helpful in trying to resolve whatever difference seems to exist here between what I understand this memorandum re-

flects from Sullivan and what Kissinger's recollection is. I assume Dr. Kissinger has been questioned about this in his Interrogatories and my understanding is that he does not recall this particular conversation.

[91] Q What would be the meaning of "no information of pertinence," in connection with the discontinuation of the tap?

A The word "pertinent," to me and I think to all of those in the program would be whether or not there was information involving the purpose of the investigation, leaking. If there was no information, if there was just information about other things, that is one thing. But if there is information about leaking, then of course.

If there was no information on leaking, then it would not be pertinent. That is the way I read the Sullivan memorandum.

MR. SHATTUCK: I would like to turn now to another subject. I would like to mark as Plaintiff's Exhibit C, D and E, three documents. The first is a letter of December 29, 1969 to the President from J. Edgar Hoover. The second, Exhibit D is a memorandum, handwritten on stationery of the Summer White House, San Clemente, California to H. from John Ehrlichman and the third is a one-page handwritten note headed The White House, Washington and it is from Bob Haldeman.

(Whereupon the above described documents were marked as Plaintiff's Exhibits C, D and E respectively for identification by the Notary Public and are attached hereto.)

Q BY MR. SHATTUCK: Reading from the second paragraph of Exhibit No. C which is the letter of December 29, 1969, it says:

> "Halperin was recently in contact [92] with an unidentified individual who told Halperin that he received a call from Clark Clifford. Clifford is probably identical with the former Secretary of Defense. According to this individual, he and Clifford discussed an article which Clifford may be preparing. He said that Clifford is concerned about 'sharpening up his at-

tack upon Nixon' and that apparently he had obtained 'old Nixon statements,' one being to the effect that President Thieu is one of the five greatest men of our time. Another statement is that Viet Nam is one of the finest hours in United States history. He said that Clifford felt that whether the article would be published would depend on what alternative he, Clifford, has to offer and that Clifford asked him what alternative he could offer. This unidentified individual did not indicate what he told Clifford."

I will ask you first whether you recall reading this letter prior to any knowledge that you may have of it in connection with this case.

A No.

MR. CHRISTENBURY: You mean other than in preparation for this deposition?

THE WITNESS: No. I do not recall.

[93] Q BY MR. SHATTUCK: What was the significance in terms of the ongoing investigation of leaks of Clark Clifford's writing a magazine article attacking the administration's Viet Nam policies?

MR. CHRISTENBURY: Excuse me. I guess I have a problem. When the President indicated he never saw the document and never reflected on it at that point in time, I don't perceive the role that he had at that time. That is, in evaluating the letter and what action may or may not have been taken by others.

(Consultation off the record between Counsel for both parties.)

THE WITNESS: Counsel, I know that it is rather difficult for you to try to sanitize every question and get it down to what is absolutely specific. But I mean, you are trying to get at the heart of the matter shall we say not over the strenuous objections of my Counsel, but with his permission, I evaluated but not having seen it at the time—

Q BY MR. SHATTUCK: I appreciate that.

A As far as Mr. Clifford was concerned, I would not have seen any memorandum of this sort. Mr. Clifford had been and was very strongly attacking our policy in Viet Nam. You may recall on November 3rd, 1969, I laid out the policy and rejected the demand for immediate withdrawal and took the line which eventually led to the Paris Peace Accords and the release of the POWs on January 23rd, 1973.

Now as far as what was done as a result of this memorandum, I recall nothing at all was done and I recall no [94] discussions with me about it. As far as this, I think maybe it gets to the heart of the matter, I think perhaps that is the reason for your question, which taken generally, is appropriate. It is why would such information which would appear to be political come in?

Well, I suppose one reason would be that Mr. Clifford was not just a private citizen at the time but was a former Secretary of Defense. I can well recall when I had my briefing by the National Security Council, after my nomination, he was the strongest talker in the group. His changing his position and coming out against our position and coming out against the position that President Johnson, his former Chief, was still supporting, would have from a foreign policy standpoint, some fairly significant consequences.

Nevertheless, I would not consider myself that that would be a proper subject for the FBI to be informing the White House on because there were people against the war and there were people for the war and unless it involved illegal activity on the part—writing an article of course, is something that was not in their realm of responsibility.

On the other hand, I think the memorandum would cause some concern in the sense that Mr. Halperin at that time, while he was not a full time member of the NSC staff was still a consultant to the NSC. He still had his contacts with the NSC. He still had within that time his recollections of what policies had been and some of the top secret information that was previously disclosed.

And the fact that Mr. Halperin would be in [95] direct contact with an individual working with a former Secretary of Defense against the policy of the administration for which Mr. Halperin was a consultant, would I think, raise some doubts. I think that is the reason perhaps that Mr. Hoover sent the document in.

Q The documents which are exhibits D and E which were received by the Plaintiffs in discovery and appended to the letter from—I think that that has been established in prior depositions. Is that right, Mr. Christenbury?

MR. CHRISTENBURY: Mr. Shattuck, I am hesitant. I think we have had the problem in discerning exactly in what form or what order the documents are in. We will have to deal with them without physically specifying the order because I frankly don't know.

THE WITNESS: Just ask me the general question.

Q BY MR. SHATTUCK: It would appear that the letter is addressed to you and that the information contained therein was disseminated through several offices in the White House, particularly that of Mr. Ehrlichman and Mr. Haldeman and Mr. Magruder, although that is not reflected in one of the documents I have given you.

The question that I had was, was it consistent with your instructions for these individuals to have this information?

A Certainly not. I had always as I have indicated earlier in this deposition, indicated and instructed that the purpose of our investigation here was to stop leaks of confidential information and highly sensitive information and [96] in addition, I was not interested in and did not consider a proper purpose of such investigation to be information for political purposes as apparently the FBI and some previous administrations had been used for personal purposes.

In that connection, I should say that in my view, one of the things that has always concerned me about the FBI and the personnel files for example which were submitted when we would have to appraise people for hiring, were ones that I didn't want to see because if somebody was

going to be on a staff, I didn't want to know what his problems were or had been in early life or present life and et cetera, et cetera.

I only wanted to know whether presently he was competent, whether he could do the job. As far as his present life was concerned, unless it involved something that might impinge upon his service, I felt that it was best not to know because it would create an unpleasant relationship between me and whoever I had to work with. With regard to the wire tapping information, Counsel has quite appropriately pointed out that in some instances wire tapping summaries contained materials which are not directly related to leaks, but which contained materials which are personal in nature.

I did not like to see and did not want that kind of material. That is one of the reasons on the British correspondent's file which, when I saw that, I said, "No more of these." Again, I didn't want to spend my time on that sort of thing. Second, I did not want it unless that kind of information bore on something that involved what I had to do as President and Commander In Chief to carry out my [97] responsibilities. I didn't think it belonged there.

Third, I have as you very properly have, a very great concern about people in public life having their private lives exposed in raw data, unevaluated data and particularly exposed to colleagues and others with whom they might have to work.

When you asked the earlier question, did you give instructions that such material would not be included and the answer was I did not, a further answer would be that probably if I had, it wouldn't have meant anything because the custom of the FBI has been for many years and at least four previous administrations and I do not know what the situation is now, but in our administration it was simply to furnish all information because of the lack of knowledge of the field agent or even the individual who signed the summary letter as to whether it might not have some bit of information that they might consider to be personal and private but which somebody more cognizant of

the facts in the matter and the concerns that we had in terms of leaks, might consider it to be very pertinent. I have answered this in more detail simply to point out that in this whole program I have deeply resented not on your part but on the part of the Judiciary Committee and on the part of others who have criticized this program—and they should evaluate and criticize it—every program must constantly be reevaluated and improved as time goes on, just as we in the field of foreign policy, change our policy just as we changed our policy on Russia and changed the policy on the Mideast and changed our policy on Viet Nam and et cetera—so it is in a [98] case like that that there should be the same kind of what I call self examination and reappraisal and particularly reappraisal which will take a greater cognizance of the importance of separating what is private and personal and not relevant to the individual's not just loyalty but primarily his judgment and his actions in his government position in any investigation that might be conducted.

The wire tapping and generally the surveillance in our society is not a pleasant and not a preferable action that any Chief Executive likes to approve. It has proved in the past and during our administration during a very difficult war, we considered it to be justified on a limited basis at that time. But to the extent that the overlap even in previous administrations and in ours where the overlap as far as I can see, goes into the field of an individual's personal life, I think that that is one of the greatest deficits.

Q I have just one further question about this series of documents. Plaintiff's Exhibit D which is a two-page note on John Ehrlichman's stationery reads:

> "H—this is the kind of early warning we need more of. Your game planners are now in an excellent position to map anticipatory action."

My question is, is the happening of anticipatory action based on this information consistent with the original purpose of this wire tap as originally instituted?

[99] A No. The wire tap was instituted for the purpose of stopping leaks. That was the legitimate national secu-

rity purpose. As I have pointed out and I do not want to be repetitive, but I think it would be well to summarize it concisely now then and answer your question exactly. Some of you may know that despite my party affiliation, I am a great admirer of Woodrow Wilson. I once quoted with great approval Woodrow Wilson's very famous statement made immediately after World War I when he was going to Versailles. You may all remember the phrase, "Open covenants openly agree to." As a matter of fact, I was critical of President Johnson for a conference that he had had in Manila in which covenants had been made openly. I mean, had been agreed to openly. They had been announced openly but had been agreed to privately.

I would say in retrospect that Wilson was wrong, naive, and idealistic. But, he was wrong. In the case of world dealings between nations and even in our private sector, if you are going to have covenants that are openly agreed to, almost inevitably they must be secretly negotiated. That was true of all of the five great initiatives which I have referred to today. None would have succeeded without secrecy.

So, they would have been delayed and prolonged because of this. I would say that is also true in many parts of our domestic society. I recall for example without bringing in a completely tangential issue, of settling the longest steel strike in history in 1959. We had an open agreement settling the steel strike. But there were eight solid days and nights of the most secret negotiations between David [100] McDonald and Mr. Roger Blough and Mr. Arthur Goldberg.

I was there. Mr. Mitchell, not John Mitchell, but Jim Mitchell was then the Secretary of Labor. They were all secret. Only in that kind of negotiations where individuals knew that they weren't going to be quoted and where individuals knew nothing was going to be leaked, do you get individuals to frankly, come a little way and move this way or that way and say that they would state this now but would back away from it publicly if anything came out on it. Only that way do we get an agreement.

This seems to be tangential. But the same process applied with our negotiations with the Chinese in Shanghai and the communications with the Russians and SALT and all of our Mideastern negotiations. Of course the most difficult negotiations between North and South Viet Nam, too. And coming back to my critical point, it is well for this suit to reflect on the basis of wire tapping and the abuses of surveillance and the abuses in the field of the use of wire tapping for political purposes. For example, the suggestion that those on Martin Luther King were for political, rather than other purposes. I am not suggesting that I was there to make the decision. Mr. Robert Kennedy may have had a good reason for making it. But the point is that wire tapping on the other hand, has the liability of that because conversations run together. They are not separable. When an individual is talking on the phone or talking across the table with another individual on substantive matters that are highly sensitive, they may have discussed personal matters that are not sensitive, [101] but very personal and private and should never—that should be kept private. Political matters may be discussed that should not be made public.

Therefore, to protect the sanctity of private and political matters, the political matters I mean are in the best sense, a national consideration of great importance.

You have to weigh it against the problem of leaks. How do you stop them? Here a device was used and has been used over the years. It was used by us on a limited basis through my instructions. It did have some effect, although there were far too many situations as you pointed out which I call the personal and the private that meant nothing at all.

This is what I referred to as crap in that conversation with Mr. Dean much later.

Yet if as the result of an investigation or surveillance conducted to stop a leak, it is effective and allows a Chief Executive of the United States to succeed in a foreign policy initiative that not only may bring peace but may give a better chance for peace for years to come, that must

take precedence, trying at the same time to conduct the program in a way that minimizes the intrusions into the private and political use of wire tapping. That is inexcusable, the use of any of that in terms of the private habits of people, whatever they do. In my view, that is not defensible.

As to the use of it for national security purposes then I consider stopping national security leaks being highly important to national security, I think that that is what I am getting at when I talk about the leak. I again emphasize [102] that it has an effect in three different ways. If material leaks, it means that there is a chilling effect on the discussions that the Chief Executive Officer has with his colleagues. They are not going to talk freely, if they think it is going to be leaked. Otherwise, you are going to talk for the record so that they will look good in the newspapers or in "history," and secondly there is the chilling effect insofar as our dealings with our potential enemies or our friends because I can say from having talked to over 100 chiefs of State for many, many years, I talk frankly. They talk frankly only if they think they are talking in confidence. All of this seems far afield from the subject of Mr. Halperin's taps, but it actually is not. It relates to it all. I think it puts it in some kind of perspective.

Q I would like to direct your attention to May 12, 1970 and ask you whether you recall a meeting between yourself, Director Hoover and Mr. Haldeman on or about that date in which there was a discussion of these taps and in fact you discussed this tap.

I think the record will reflect an FBI report on this tap to the White House. Do you recall that meeting?

A No. It would have to be further described.

Q We have just shown you a document that is entitled "Sensitive Technical Coverage At Request of The White House." There is a handwritten date at the top and the phrase "Prepared For Director's Brief 5/12/70.

(Whereupon the above described document was marked Plaintiff's Exhibit F [103] for identification by the Notary Public and is attached hereto.)

Q BY MR. SHATTUCK: Other testimony in this case has indicated that this was a briefing memorandum prepared for Director Hoover for the meeting to which I just referred at the White House between yourself and Mr. Haldeman and Mr. Hoover as well. I would just like to ask you if that refreshes your recollection about the occurrence of such a meeting?

A May 12, 1970, was just shortly after we had moved on the enemy occupied territory in Cambodia. My recollections in that period, I must say, are very limited to what happened then. I don't recall this particular memorandum or conversation.

Q Do you recall about that time instructing Director Hoover thenceforth to send summaries of all the wire taps to Mr. Haldeman at the White House and to cease sending summaries to Dr. Kissinger?

A Let me read from this and see if I have it right. I am rather surprised at this.

> "We have learned through the sources that Halperin, who was serving as a consultant to the National Security Council, planned to resign."

On May 12 you had resigned. You resigned May 7, didn't you, Dr. Halperin?

DR. HALPERIN: Yes. I think this is a summary.

MR. SHATTUCK:

> "Halperin, who was serving [104] as a consultant to the National Security Council, planned to resign to protest the invasion of Cambodia. He subsequently did resign. During conversations with other individuals Halperin indicated that he feels the President intends to attack North Viet Nam and Laos and agreed to work with Senator Fullbright (D-Arkansans) in opposing the war. Halperin also stated he contacted Kuntsler, who may be identical with William Kuntsler, the attorney for the individuals recently convicted for violation of the Anti-riot Laws at Chicago, Illinois. Kuntsler allegedly is willing to join an 'organization' being formed by Halperin and other individuals. (The above are highlights received from

this coverage during the past few days. It has received very limited dissemination going only to the President and Dr. Kissinger.)"

THE WITNESS: What is the date of this?

MR. SHATTUCK: May 12, 1970. I don't mean to interrupt any statement you may wish to make, but I would simply like to say for the record that it is the best recollection of the Plaintiff, Dr. Halperin, and he certainly has documentary evidence to support that, that this reference to William Kuntsler is a misstatement of the name of Clifford. In fact, certainly the information was received.

THE WITNESS: A slightly different spelling.

[105] MR. SHATTUCK: Yes, a slightly different spelling.

Q My question to you of course, would be although it need not be asked if you wish to continue with your statement, whether you would have any information to provide that Dr. Halperin had in fact been in touch with Mr. Kuntsler. I am sure—I presume you do not and it is his best recollection that this is a misrepresentation of the facts. In any event, I didn't mean to interrupt your statement.

A Well, let us be quite candid. Dr. Halperin would be the first to admit that he, along with others, opposed the action in Cambodia and apparently Dr. Halperin also I am sure, probably assumed as did some others that I was now going to order an attack on North Viet Nam and Laos.

Well, he was just two years early. I did it two years later. It was one of the best decisions I ever made.

Q I believe the question pending is whether this document and your reading of this paragraph refreshes your recollection about the meeting that you had with Director Hoover.

A No. I do not know.

MR. CHRISTENBURY: Excuse me. The meeting you are referring to is the one where a decision was made to send summary letters to Mr. Haldeman, rather than Mr. Kissinger?

Q BY MR. SHATTUCK: That is correct.

A That meeting I do remember. But I don't remember it in connection with any discussion of Dr. Halperin, no.

Q Could you summarize the gist of the meeting [106] that you recall with respect to directions that you gave to Director Hoover to send summaries thenceforth to Mr. Haldeman?

A Yes. My best recollection is that prior to that time, General Haig came in to see me. He expressed great concern about Dr. Kissinger's very emotional and very concerned reactions to the Cambodian action, not that he was opposing it. I was concerned and sometimes emotional, too. It was a very difficult time. And Haig told me privately that he felt that it was important that in now conducting the Cambodian operation, that giving the guidance which we of course did, through the Wasag Committee which was the Washington Special Action Group, Dr. Halperin sat in it.

Q I am sure your attorney and myself are not familiar with that.

MR. CHRISTENBURY: We appreciate any explanation.

THE WITNESS: I don't know why they called it Wasag. But nevertheless, Dr. Kissinger called it Vesseg.

Nevertheless, he said we have simply got to get some of the load off of it and those reports that are coming in from Hoover which were being sent in which have been coming in to him and of course Haig was carrying an enormous load, too. They were working day and night. I was having some sleepless nights as well. He said he would like to have the responsibility for—up to that time, it was still being handled by Dr. Kissinger and he was assisted by his deputy, Colonel Haig. He wanted it transferred to someone else and suggested that it might be Mr. Haldeman.

I agreed that I wanted Dr. Kissinger to [107] concentrate his full attention to subject A and I determined that the best individual to assume the functions that he had as-

sumed with some limitations thereon, which I will explain, would be Mr. Haldeman.

I picked Mr. Haldeman to do this for several reasons. One was because, as I pointed out earlier, that he was totally privy to all of our major foreign policy issues. As Chief of Staff, he could sit in on national security meetings. He was one of four who knew about the China initiative in the entire government. He participated in the May 8 decision. He participated in the December 18, 1972 bombing decision. That was the B 52 bombing decision. I say that only for background to indicate why Mr. Haldeman's expertise was not limited to matters that had to do simply with where to move the furniture around the White House and the Presidential schedules.

The other reasons that I selected him were that Mr. Hoover was always expressing concern about proliferation of his reports. He was sensitive about press criticism, always sensitive of press criticism and particularly press criticism of possible wire tapping, not so much as to White House staffers that were involved, but where newsmen were involved.

He said he wanted to and would prefer to have one man work in the White House and only one rather than send two copies which he was sending previously.

Mr. Hoover had great confidence in Mr. Haldeman and ironically, so did Mr. Kissinger. Mr. Haldeman and Dr. Kissinger had each other's confidence and Mr. Haldeman had [108] my confidence. Consequently on that date or shortly thereafter, I indicated to Mr. Hoover that the reports that up to that time had been going to the NSC should be sent to him, all reports from the FBI. He should evaluate and question if he found material that should be brought to the attention of others involving national security matters or leaks, to be more specific. He should bring it to the attention of Haig and others, otherwise that there should be no further action on his part and that he should have a direct contact with Hoover or with whomever Hoover should designate he should have those contacts with.

Now I know that the charges have been made, maliciously and viciously—and not by you but by others—that and at the time were totally false, that the transfer from Kissinger to Haldeman was for political purposes so that Haldeman could gather political intelligence on people that Hoover was wire tapping. That is totally false.

I can recall no instance of any kind in which Mr. Haldeman initiated a political investigation. He would not have had the authority to do so. The Attorney General would have to have approved it. Second, I can recall no instance where Mr. Haldeman used any such information or reported any such information or used it in any other way. He acted impeccably as far as I know in handling these reports, just as Dr. Kissinger handled them. As a matter of fact, I think there was less proliferation when he handled them than when Dr. Kissinger did.

He used his assistant, Mr. Higby, as I later [109] learned, to run through them so that he wouldn't have to spend too much time going through too much material because he also was busy.

But beyond that, I know of no proliferation. But there was no political use and no private use that I know of. None was authorized. None was intended. I wanted to lay that to rest once and for all.

Q I would like to refer back to just briefly to Plaintiff's Exhibit D which is the one-page handwritten note that we discussed in connection with the letter of December 29, 1969. It is a response to the memorandum letter. It is Plaintiff's Exhibit D on John Ehrlichman's stationery. It is handwritten and addressed to H. It says:

> "This is the kind of early warning we need more of. Your game planners are now in an excellent position to map anticipatory action."

Then there is Exhibit E which is Mr. Haldeman's response to that memo which says:

> "I agree with John's point. Let's get going."

I will ask you whether that is consistent. I believe I have asked this question already. But, I will ask you

whether it is consistent with the original purpose of this wire tap and the information coming over the wire tap?

A No. The use of it, the use of the information of the wire tap for what can be described as political purposes, was never directed and never authorized. Had it been submitted [110] to me, it would not have been approved.

Let me now however distinguish that Mr. Clifford activities were not, to use British understatement, a "top secret." Virtually every gossip columnist and even some responsible columnists were writing about what Mr. Clifford was going to say and what he was doing. He was talking all over town about his intention to write articles and so forth.

Mr. Haldeman's reaction which obviously I can see from his scrawl, was an instantaneous one, was probably a natural reaction that if Clifford was going to take after us that we better get an article written to answer it.

We did not have—Mr. Haldeman or Mr. Ehrlichman—did not have to have Mr. Hoover's summary on a conversation that Mr. Halperin had allegedly with Mr. Kuntsler or Mr. Clifford. I think we knew Kuntsler. We didn't have to have that to know that we ought to have some kind of action going in terms of getting our side across in an aswer to Clifford and many others.

May I say again, I respect their views, although I totally disagree with them. We had to debate them and we did.

Q Plaintiff's Exhibit C which is the two-page letter to the President dated December 29 from Mr. Hoover begins "Previous communications have set forth information which we obtained from extremely sensitive sources concerning contacts made by Morton H. Halperin." Then it refers to Mr. Clifford. What would your understanding have been concerning the use of the term "extremely sensitive sources," as the source of that information?

[111] A Extremely sensitive sources means to me, having been exposed to some of this type of material over many, many years, including the years I was Vice-president, electronic surveillance.

There is one other possibility here, I am sorry. Mr. Hoover used that term and the FBI used that term, "extremely sensitive sources," and the CIA does as well for electronic surveillance or possibly—but, this couldn't possibly have happened with Mr. Halperin, like a secretary or somebody else in his office who was ratting on him. But, that wouldn't have happened to him. So I imagine, that what—

Q Referring again to the meeting that you had with Mr. Hoover and Mr. Haldeman concerning the redistribution of the summaries to Mr. Haldeman, would there have been a tape of this meeting if it were conducted in the Oval Office in May of 1970? Would that meeting have been taped?

A The taping system as you probably know—I have not had the opportunity that Counsel would have had to study all this, was not installed until the spring of 1971. There were no tapes until then.

Q Did you make any notes concerning that meeting or dictate any Dictabelt recollections?

A No.

Q To your knowledge, did Mr. Haldeman make any notes of that meeting?

A As far as I know, no. He might have.

Q You didn't direct him to make any notes?

A No. He would at times. At other times he would [112] not. He had an exceptionally good memory. At times he would just sit there. I assume he would dictate something later. But I don't know that he did. But I did not.

I made no notes in that period, in the 69/70 period. Just so you will know, there are no—there was no taping system until March 1 guess it was of 1971. I had no Dictabelts for that period.

I am sorry, I do have one Dictabelt in that period. I do have one in December of 1969 because I expected and I recall this distinctly because I thought it was such an historic occasion, President Johnson's returning to the White House in December, a year after he had left.

He came to one of the worship services. We had breakfast the next morning and had a long conversation. I remember again that in that period President Johnson expressed his concern about leaks of information. He expressed support for what we were trying to do. He knew how difficult it was. He didn't express political support, you understand.

On the other hand, while I am not one who will say any one of us or any individual in government has not made mistakes including Mr. J. Edgar Hoover whom I had a great respect for—he again expressed his feeling that Mr. Hoover was very reliable and he also said that on that occasion for whatever it is worth for historical purposes, he had been terribly disappointed in what had happened to some of his previous aides who had been the strongest hawks he—he was referring of course to Mr. Clifford—who turned totally around. I think that he was concerned because—not [113] because I was President but because he expressed again his admiration for Mr. Rusk, whom he said really didn't have a strong feeling about Viet Nam in terms of the time we entered it or became more deeply involved. It was entered of course before Johnson came in. But his respect for him because he said that here was a man who could have gone out and came out as a critic, but here is a man who recognizes how great responsibilities are and doesn't turn on his former President and supports the present President in a very difficult hour.

I say that in behalf of both men because it shows the measure of them. I should point out one other thing about Mr. Hoover because obviously we have said some things here which may tend to reflect on him. It seems to be rather common these days and so justified—because anybody who does anything is going to do things that are unjustified—but in the conversations that I had with him, he discussed several former presidents. I never heard him utter a word of criticism about President Truman, President Eisenhower, President Kennedy or President Johnson. I have never heard him indicate to me any leak with regard to the activity they might engage in that he thought might be political and advantageous for me to

know, particularly if they had been of the other party. I have heard him only make some rather shall we say not too complimentary remarks about Mr. Ramsey Clark.

Q Did you ever read or discuss the summary letters that were sent to Mr. Haldeman from May of 1970 until the discontinuance of the taps? I will start by asking you whether you ever read any of them.

[114] A I don't recall Mr. Haldeman bringing any to me. He might have. If he did, I might have. I have no recollection of having read any of them. If one would have been of great enough importance it would have been brought up to me. I think I would recall it. But if you can refresh my memory on this, I will be glad to—

Q Did you have conversations with Mr. Haldeman about any of the information that he was receiving from the FBI, anything that he thought of importance that he called to your attention?

A Nothing in that period that I can recall with Mr. Haldeman. If you will give me the dates again—

Q Yes. May 12, 1970 until February 10, 1971 when the taps were discontinued in Halperin's instance and other taps were discontinued.

A The only conversation that I could recall with regard to any taps and I recall none with regard to Mr. Halperin incidentally, but the only conversation I can recall involved an individual who had been a top member of the National Security Council who had accompanied Secretary Kissinger on some of his frequent trips including several to Paris on the Viet Nam negotiations and I believe even on one to China, who resigned from the staff and who later became a foreign policy adviser for Muskie.

Dr. Kissinger felt that he was concerned about the individual, not because of who he was—because he considered him to be a very honorable man with just an honest disagreement with the policy—but he was concerned not because [115] of any political advice he might be giving Mr. Muskie but because he was afraid that the secret negotiations with the Chinese and with the Vietnamese might be blown.

Taps that occurred in that period indicate absolutely honorable conduct on his part in that respect and as far as any political information, there was none. That is the only conversation I recall offhand.

Q I understand, following your testimony, that you do not recall reading any specific letters in this period. I would like to show you two letters, one dated June 23rd, 1970 to Mr. Haldeman signed by J. Edgar Hoover and the other dated November 13, 1970 to H. R. Haldeman signed by J. Edgar Hoover.

(Whereupon the above described documents were marked Plaintiff's Exhibits H and I respectively for identification by the Notary Public.)

Q BY MR. SHATTUCK: If I may, I will read you the paragraph on Dr. Halperin in the June 23 letter.

"Morton H. Halperin, who recently resigned from the National Security Council as a protest against the invasion of Cambodia, was contacted by Howard Gillette (phonetic) who is apparently connected with Project Purse Strings, a group formed to support 'Peace' candidates in forthcoming elections. Halperin, at Gillette's request, agreed to talk to the 'top people' in the offices of [116] Senators Norris Cotton and James B. Pearson on the war in Cambodia. Gillette described Senator Cotton as 'marginal' on the Church-Cooper Amendment but said that Halperin's talk could make Senator Pearson favor the amendment."

Was the reporting of this information about conversations Dr. Halperin had to the White House, consistent with the original purpose of the Halperin wire tap?

A Dr. Halperin at this time had received—his relationship as a consultant—when did he resign?

Q It was in May of 1970. So it was prior to that. You are right.

A Yes. I would not consider that as consistent, no.

Q The letter dated November—

A Let me say that I should qualify that by saying except for the fact that Mr. Halperin, even though he re-

signed from the staff of course, would still have a considerable amount of knowledge with regard to a number of highly classified activities, some of which have been made public and others of which have not been made public.

Only to the extent that discussions involved such activities, would it be consistent. This involved Mr. Halperin as a former member of the staff trying to develop support against the administration's foreign policy and that he had every right to do.

Q With respect to the letter of November—

[117] A I can imagine, having been once a member of the Senate and it was well known that he was working there on November 13, yes, sir.

Q The third paragraph of the letter of November 13 reads:

> "Halperin and Gelb also discussed a meeting which may take place this week to advise Senator Muskie concerning 'China Policy.' They discussed the fact that Nichols, Warnke, Barnett, Halperin, Tony Lake, Reed Perkins and Oxenberg may participate in the meeting. Lake is probably identical with William Anthony Lake, a former member of the National Security Council staff."

At this time I will ask you whether or not you were aware that Dr. Halperin was working for or advising Senator Muskie?

A I could have been. And of course, I would not have been surprised because many of those who had been working with our staff and when I say that, there were not many, but some who had been working with our staff and who left our staff because of disenchantment with regard to our program to end American involvement in Viet Nam, that they would have done it in a different way, did feel that Senator Muskie was the best alternative and went to work for him.

Q Would the reporting of this information have been consistent with the original purpose of the tap?

A No and it was not requested, as far as I know.

[118] Q On February 11, 1971—

A I notice Mr Lake's name is here. Mr. Lake's name, I have already indicated would have meant something, due to the fact that he had more recently been privy to very, very confidential negotiations. If they became public, it would have aborted the programs.

Q So the record is clear and correct me if I am wrong, I believe you previously testified it was known that Mr. Lake was working for Senator Muskie?

A Yes. There was a public announcement.

Q And there was no reflection on Mr. Lake as to the information with respect to the possibility for his responsibility of the leaks?

A No. That is exactly what I said. As a matter of fact, as you will note from both of those or either of those, they indicate no leak and that is without question the reason that probably Mr. Haldeman or whoever was in charge of it, Mr. Haldeman at that point through whom these various summaries were sent, would not have brought them to my attention because he knew very well that my interests were solely in the leak problem as far as the FBI activities were concerned.

Q On February 11, 1971, the records produced through discovery in this case indicate that the Halperin tap and evidently others were discontinued. Were you aware of the discontinuance of the taps at that time? Did you have any discussions about it?

A No.

Q Did you have any discussions with anyone prior [119] to this time about the discontinuance of the taps? Did you have any discussions prior to this time about discontinuing it?

A Well, no discussion in regard to discontinuing the taps that I can remember except that there were discussions of Mr. Hoover's concern about attacks that were being mounted upon him at that time for his antiwar dissident program or whatever that was and with regard to

taps generally and Mr. Hoover was really sensitive about it.

Q Do you know who made the decision to discontinue those taps?

A The decision was made by the Attorney General, I believe. It was by Attorney General Mitchell.

Q Were you aware of any practice—

A He had the authority.

MR. CHRISTENBURY: Excuse me. I want to make it clear that the witness is saying this of his own personal knowledge.

THE WITNESS: Yes. Of my own personal knowledge. I am not aware, but I assume that the decision was made by Mr. Mitchell. I cannot recall his informing me of it. But he might well have sent a memorandum. I don't know. I don't have one. I don't know if he sent me one.

(Consultation off the record between the Attorneys for both parties.)

THE WITNESS: Counsel, before we proceed I would like for purposes of being sure that the record leaves no misconception, to point out that Mr. Haldeman and Mr. Ehrlichman's actions and memoranda that they exchanged with regard to the [120] information that they received insofar as Mr. Halperin working with Mr. Clark Clifford and also with regard to other activities being engaged in by former members of the NSC staff, who were working with people and opposing the administration on the conduct of the war, I should point out as I did previously that I did not consider that to be a part of or within the guidelines of the program that I set forth. The purpose of the surveillance program was to stop the leaks and the wire tapping was to be part of that program if and when necessary and only as long as necessary.

It was not for political purposes and certainly not for that and to avoid wherever possible any invasions of privacy. However, I would under no circumstances leave the implication that Mr. Haldeman or Mr. Ehrlichman were acting in bad faith because after all, this nation was en-

gaged in a war at that time. Mr. Haldeman and Mr. Ehrlichman and others knew or at least believed that the policies that we were following would succeed in ending American involvement in a way that would allow us to continue to exercise our proper role of leadership in the world.

They were also aware of the secret negotiations that were going on between Dr. Kissinger and our colleagues in Paris and in Mr. Haldeman's case, he was aware of the upcoming initiatives that might develop, particularly with regard to China and later with the Soviet Union.

In both of their cases, I can well see why they might consider information that former members of the White House staff were actively working with others, be they [121] political or otherwise, against what they considered to be the right kind of what I would not call a war effort, but a peace effort, could be their justification in terms of good faith.

I think that should be put on the record in fairness to them. My answer to your earlier question related to my understanding and as far as I was concerned, I perhaps did not become as concerned as they did about such activities as Mr. Clifford because the war was one that divided Americans in both parties and all age groups and it was one in which men like Mr. Lake in particular, I would say left their positions not for political purposes, but because they were against the war.

Now it is going to take somebody much better than you or much wiser than I to sit in judgment as to their good faith on that particular issue as to whether their motivation was political or whether their motivation was basically the security of the nation, having in mind that those who were opposing what the administration was doing were actually working for a program which in my opinion, did in fact, prolong the war because as long as the enemy had the impression that there was a substantial chance that there were some who would take peace at virtually any price, and could be elected President, they would hang on. It was only when they became convinced that there

was no way of settling that way that they stopped. I am not making a stump speech about the war. That is all done now. But you have to put yourself in the position of those men at that time.

Q Was it your understanding at that time that the use of wire tap information for political purposes however [122] that may be defined and I will leave that to you, would be illegal?

A No. I am not going to make a judgment on that. What is your next question? You can't expect me to give—wire tapping for political purposes—do you suggest for example—you wouldn't mean to suggest that maybe President Johnson's surveillance and possibly wire tapping of candidates for president or vice-president was illegal, because he thought they were going to take a position that would jeopardize his peace efforts in 1968. Was that illegal? I ask you the question.

MR. CHRISTENBURY: I think we have—

THE WITNESS: You see my point? When you get into this, you are getting into a situation where it depends on the motive. I mean, I think the motive has a lot to do with the legality. Also, when you say what is political and what is not political, you have to have in mind that overriding the politics in this issue was the national interest in bringing to an end a very long and difficult war, where reasonable men and patriotic men and women honestly disagreed as Mr. Halperin and his colleagues disagreed.

I am setting that forth certainly so that the record shows that. At the same time, I point it out as I did earlier, that the purpose of the program that I had set up was to stop leaks. That was simply an offshoot of it which developed due to the fact that the individuals who were working with others who were mounting a massive program of protest against the war, which in my opinion did prolong the war by [123] encouraging the enemy to hang on, this effort is one which the FBI reported. If mistakenly, certainly in good faith because they considered it to be one that involved something other than politics. It involved peace, which was very unusual at that time.

Q Did you have any discussions after Dr. Halperin or other persons who had been wire tapped left the government about the legality of continuing the taps on them after they had left the government?

A I recall no such discussions, no.

Q Would your judgment have been affected as to the legality of those taps, had you known that they had left the government, which I take it you did?

A No. No. Just a moment. I did know about the tap on the individual in the National Security Council staff that I have referred to whose name we will not mention. As I understand, we are not mentioning names. As far as the legality of the tap on Dr. Halperin, I had no discussion of it.

If it had been raised, I would have considered it to be legal, yes, due to the fact that he had had access to top secret information. He had at least some record which showed indiscretions, using that term very precisely. Under the circumstances, it was important to know whether or not that indiscretion might lead to a leak which we would have to protect ourselves against.

Once the war was over, it didn't make any difference. Let me say also that as far as that was concerned in the case of Dr. Halperin and as I said, he guessed wrong on North Viet Nam [124] and Laos by two years. You can't really fault him for that. In the case of the other individual that I mentioned who left the staff, I know of no instance brought to my attention where he did leak it. But on the other hand, had the matter been brought to my attention for decision as to whether the taps should be continued, if Dr. Kissinger had asked me for example, I would have said yes because of the information they had.

Q Would the passage of time after leaving the staff be a factor in determining the continuing legality of the tap?

MR. CHRISTENBURY: Mr. Shattuck, I have a little trouble in that area. The President has testified that the decision was never presented to him to make.

To have him at this date, some six years later speculate as to what he might or might not have done, had the deci-

sion been presented six years ago, I don't think serves any useful purpose. I think it is improper. We would instruct the witness not to answer.

MR. SHATTUCK: Well Mr. Nixon has testified that it was his instruction not to unnecessarily prolong the wire tap, any wire tap including Dr. Halperin's. I think we are entitled to question as to what the unnecessary prolongation of that wire tap might have been within the meaning of that instruction. If you wish me to rephrase the question in those terms, I would be glad to.

THE WITNESS: Let me answer the question in a way I think Counsel who has very appropriately objected, will be satisfied. That is my Counsel. The taps should be removed, [125] if after a certain length of time there were no fruits from it which indicated that the individual was not conducting himself responsibly. The tap should be removed if the issues with which the individual was cognizant became nonissues. Does that answer your question.

Q Yes, thank you.

Who was responsible for implementing the instructions not to unnecessarily prolong the wire tap? Who would have made the determination that it was being unnecessarily prolonged and then would implement the instructions to discontinue it?

A I would take the advice of my National Security Council adviser, Mr. Haldeman, Mr. Mitchell or Mr. Hoover. Matters would be discussed if they were brought to my attention.

Incidentally, I think I should point out, too, that Counsel just before we recessed, very properly asked that—reminded me during the recess that as far as the discontinuance of all taps, that Mr. Mitchell must have ordered it. That is only a surmise on my part. I don't know. I do know there was discussion about the concern that Mr. Hoover was going to go up to the Hill to testify, as you know.

As we know, it was his general custom before testifying to reduce the numbers of taps and to reevaluate them all

and to reduce them to what he considered to be the necessary, productive ones and particularly at this time he was highly sensitive about the number of taps due to the press criticism he had been receiving.

Mr. Hoover and I am only surmising, which I [126] should not do in this deposition, but I will surmise because it is perhaps closer to what happened than the suggestion that Mr. Mitchell ordered it, that Mr. Hoover after due consideration and checking with members of his staff and probably checking with Mr. Haig or whomever, had reached the conclusion that as far as the taps are concerned, nothing had been produced for a certain length of time and he thought they could be safely, in the national interest, removed. There was no objection that he remove them.

My guess is that there is not a piece of paper, but there might be. Perhaps you can make that search. I have no piece of paper and I was not asked. If I had been asked, I would have approved the removal.

Q Did you at this time or subsequently form an opinion as to the usefulness of the Halperin tap and the other taps as well, although I am not questioning you about those.

A You can question about them. I can answer specifically.

Q Did you form an opinion about the usefulness of the Halperin tap?

A Well—

MR. CHRISTENBURY: Excuse me. I think that it should be pointed out that the President has testified that he never reviewed any letters with regard to Dr. Halperin and certainly he didn't make any day-to-day decisions as to their usefulness or nonutility and this was simply not his role. It is very similar to my earlier objection that we are forcing upon him now to take a position and a role that he did not exercise six [127] years ago.

THE WITNESS: I will then limit my answer, if my Counsel will permit, to just a general observation which may be helpful for the record.

It may not be helpful to Dr. Halperin in his case. I would say that the use of electronic surveillance is a tortuous, long and having talked to some who have engaged in it, boring exercise. But, also the individual conducting it is looking for what they call the big break. They seldom find one. In the case of these taps generally, there were no so-called big breaks.

On the other hand, as a result of the taps there was a tightening of procedures within the National Security Council as to access to information because of the fact that not speaking of leaks, in those precise terms, but speaking of loose talk and just general personal conduct, the procedures were tightened and individuals who had had great access before had that access reduced.

Second, in some instances it is my understanding that not in a direct way, but in an indirect way, individuals were transferred or separated from their previous assignments due again, not to precise information but to information that was considered to be important enough to require it.

I finally would say third that as far as the usefulness of the taps are concerned, they were not useful politically and were not usable politically. They were not useful in terms of so-called invasions of privacy and were not so used.

[128] The third thing is that we have to examine them in the light of the situation at the time. We, as I have pointed out earlier, do not have just those matters that are of public record but other highly sensitive matters.

Counsel, I am going to suggest to that list of highly sensitive matters which members of the NSC staff would have had access to and which even today should not be made public. Therefore, this kind of preventative action was indispensable. I cannot separate for example—I know you are concerned and I am concerned too about what are called the excesses of the CIA. Let's leave assassinations out. Let's go into covert activities. Let's leave out countries like Angola, if you want to.

But as I referred to earlier with regard to Italy, I was in Italy in 1947. I was a young congressman. I know that without American assistance, the Noncommunist Parties would never have survived at that time, at least that was my conviction and it was a conviction that was held when a Democratic president was in the White House.

I strongly supported his efforts and those of the CIA then under his direction to be of assistance.

Now today, we have a situation and it is not on all fours with this, but it is an indication of it, where the situation in Italy is difficult. One picks up the morning paper and reads that a committee of congress has performed a great service by exposing the fact that the CIA may provide funds for the Noncommunist parties in Italy and so two lines of criticism develop. One is that it should not be done at all [129] if they can't get the funds on their own, they don't have a right to survive. That of course, overlooks the fundamental fact that in a period of detente, the risk of war goes down but the risk of conquest without a war through subversion and covert means goes up geometrically. That has been true for years.

Coming back to the other way, the argument about that is that if we help Italy, the Noncommunist parties we should do it openly. So if $100,000,000 goes to the Christian Democratic Party and so forth in covert activities that the United States has had where free political parties are fighting against a Communist party, a Communist party supported quite openly by the Communist Party of the USSR, the support that we have given has been covert.

If it is given openly, ironically, it would be kiss of death to that party, because there is no American political party in the world. There is a Communist political party in the world.

Let me come back to this, now. As we examine the CIA as we are and as we examine the FBI and its activities in the field of surveillance, it is the age old problems civilizations in all modern times have been faced with. You have to balance security and freedom. In some areas you have

all freedom without security and in other areas security without freedom.

In America, we have the blessing of both. What we were trying to do with this program was to maintain security with the least possible infringement upon freedom. It is not [130] always possible to do so.

We did our best, but it is not always possible. I would say finally with regard to those who may be investigating us, of course it is not an investigation of the FBI except insofar as it relates to Dr. Halperin, but the investigation of our objectives abroad. I can think of nothing at this time and I am not thinking of the death of agents whose cover is blown as a result of a statement made by some individual conducting an investigation, but to weaken the United States covert activities or capability at this time may be good for short term politics, but long term it is disastrous to the security of this country. People will look back and remember. Well, enough of that. I am not attempting to say that as far as these leaks were concerned, that we put those in such elevated terms.

But I do know and I speak with authority on the subject, that had we not controlled the leaks even as well as we did and after the Pentagon Papers case when it became fashionable to and also rewarding for a government official to leak and newspapers to play with them on doing so, that had we not been able to conduct our policy with some confidentiality, we could not have made the progress that we have made in the five areas that I have mentioned.

That is why we tried to present our argument of good faith in this area. We are not pressing it simply as a legal way to get off. You have on these, maybe not intentionally but possibly inferred that maybe this was all illegal. But, it was not intended.

[131] But as far as I am concerned, I considered it to be legal. If I had been the Attorney General I would have ruled that it was legal. I think that is one of those areas where under proper handling, and it can be properly handled, that the use of electronic surveillance to enable the United States to conduct a responsible foreign policy, to

get all the options and to get the best possible advice and to get the communication with people abroad that we need to have, communication straight across the board without their feeling that it is going to leak out and also not to have the American position in these negotiations leak out so that it destroys it and you are unable to have a deal.

I believe that for those fundamental reasons that this kind of activity first, was not only right but then from the standpoint of security of this country I think it was legally right. I do not suggest this, that mistakes were not made as they inevitably will be, particularly in such a highly sensitive area. By "mistakes," I mean possible infringement on the rights of the privacy in the use of material for political purposes. Although, there I think a good faith defense might well be made. But I am not going to sit here and simply take the position that as far as Dr. Halperin and his colleagues were concerned we were tapping them because we wanted to know about their private lives or we were concerned because they were liberal or we were concerned because they were against the war and et cetera and et cetera.

We were concerned about our responsibility to conduct the foreign policy of this country, a foreign policy [132] which ended the draft, foreign policy which developed a whole new world, a very difficult one and not necessarily one that was a sure one in each area as in the Mideast, in Europe and in the Soviet Union.

So I have now told you again about my argument. It is not simply good faith, the Justice Department to the contrary notwithstanding.

Q Mr. Nixon, I would like to try to conclude this deposition this afternoon. I think you probably would, too. We have several more questions in a few areas. I believe that we can conclude this afternoon. Although we would never want to cut you off in any area, I will not do so. I would just like to say for the record that it is to our interest to conclude the depositions as quickly as possible.

If there is anything you wish to offer that is not within my questions, I would invite your Counsel to question you about it.

I would like to introduce a transcript prepared by the Impeachment Inquiry Staff of the House Judiciary Committee of a recording of a meeting between the President and John Dean on February 28, 1973 from 9:12 to 10:23 a.m. I would like to have it marked Exhibit J for identification. I would like to note now for the record that there is no Exhibit G in this case, if anybody is looking for it.

(Whereupon the above described was marked as Plaintiff's Exhibit J for identification by the Notary Public and is attached hereto.)

[133] Q BY MR. SHATTUCK: I would like to direct your attention to page 1751 and also page 46 which is the last page of the exhibit and ask you several questions about it.

Do you agree with the statement that you made in connection with the utility or lack of utility of the wire tap on Messrs. Halperin and Lake?

MR. CHRISTENBURY: We would of course permit the president to respond only as to Dr. Halperin. Which paragraph are you specifically referring to?

MR. SHATTUCK: It is page 1754, the second response of the President.

> "Incidentally, didn't Muskie do anything bad on there? (Unintelligible) Henry (Unintelligible). At least I know not because I know that, I know that he asked that it be done, and I assumed that it was. Lake and Halperin. They're both bad. But the taps were, too. They never helped us. Just gobs and gobs of material: Gossip and bullshitting (unintelligible)."

THE WITNESS: Do you have a question?

Q BY MR. SHATTUCK: Does this statement reflect a view on your part as to the utility of the Halperin wire tap?

A I have already indicated that the Halperin wire tap insofar as the big break was concerned, insofar as a spe-

cific leak was concerned, was not useful. That is my opinion.

Q You refer to the tightening of security as a result generally of those taps in the case of Dr. Halperin. I [134] believe that the record indicates that the tightening of and closing of his access with respect to certain information was accomplished prior to the initiation of the wire taps.

With that in mind, what tightening could have occurred with respect to Dr. Halperin and the tightening of access?

MR. CHRISTENBURY: I am not sure and correct me if I am wrong, that the testimony has been that all of the tightening occurred prior to the wire tap. I think that certain matters in the record reflect that there was a particular tightening around May 9.

My perception is that that tightening continued after the surveillances were in progress.

THE WITNESS: That is my understanding. Next question?

Q BY MR. SHATTUCK: The following statement was made by you about two-thirds of the way down the page.

> "The tapping was a very, very unproductive thing. I've always known that. At least, I've never, it's never been useful in any operation I've ever conducted. Well, is it your view that we should try to get out that '68 story then, if we can?"

With respect to the first two sentences of that quotation, does that reflect a view on your part at the time as to the productivity generally of wire tapping for detection of leaks?

A I have already testified at great length with regard to my appraisal of wire tapping, what it was and what it [135] was not. I have nothing to add.

> (Consultation off the record between Counsel for all parties.)

THE WITNESS: Incidentally, you were incorrect when you said, "Your view that we should try to get out of that '68 story." That is not accurate. It was, "Get out that '68 story."

Do you know what the '68 story was?

Q BY MR. SHATTUCK: No, I do not.

A The tapping of my plane. Whether it happened or not, I don't know.

Q What was the basis of your conclusion with respect to the Halperin tap that it consisted of gobs and gobs of material, gossip and bullshitting? Was it based on your review of the information what was produced in that wire tap?

A I have answered the question earlier. I did not review personally the material. I only got general reports from Dr. Kissinger who did review it and later on from Mr. Haldeman. That was their appraisal.

Q It was based on the reports made to you?

A That's right.

Q I would like to turn to the period of June and July of 1971. In June and July of 1971, do you recall meeting periodically with members of your staff concerning the investigations of the Pentagon Papers publication?

A Yes.

Q Do you recall Morton Halperin's name ever coming up in connection with those discussions?

MR. CHRISTENBURY: Excuse me, Mr. Shattuck. I appreciate where this line of questioning is going. I think within certain restraints it is appropriate.

If you are to inquire as to a possible use of the wire tapping material, I think that is appropriate and we would respond to the extent that the witness has any knowledge.

However, were we to stray into general inquiries and into the general areas of the Ellsberg case, I think Dr. Halperin, in his answers to interrogatories, he can't make inquiries in that regard. Consistent with my objection, if you would channel it in that area.

Q All right. Do you recall Dr. Halperin's name coming up at these meetings?

A I have no recollection of it, no.

MR. SHATTUCK: I would like to have marked as Plaintiff's Exhibit K, a one-page memorandum dated 6/15/71.

(Whereupon the above described document was marked as Plaintiff's Exhibit K for identification by the Notary Public and is attached hereto.)

THE WITNESS: Why don't you read the memorandum? Just read the memorandum aloud.

MR. SHATTUCK: As we all have copies of the memorandum, I only wish to read one or two portions of it. But, you of course are free to read as much as you wish.

It says:

"Re: Morton Halperin

[137] During the summer of 1970, Halperin, who is presently employed by the Brookings Institution, Washington, D.C., worked for the Rand Corporation in California."

It goes on to say:

"Halperin is an extremely close associate of Leslie Gelb who is also employed at the Brooks Institute. Gelb and Halperin co-authored an article which appeared in the Washington Post on 5/24/70. This article was critical of administration policy in Viet Nam. On 5/25/70, Gelb and Halperin received $750 each from Secretary of Defense Clark Clifford for an article apparently regarding Viet Nam."

THE WITNESS: They wrote it? Oh.

Q BY MR. SHATTUCK: Do you recall ever—

A They were underpaid.

Q Do you recall ever reading this or seeing this memorandum?

A No.

Q Did you at the time in June of 1971 at the White House, receive periodically information concerning persons discussed in connection with the Pentagon Papers investigation?

MR. CHRISTENBURY: Excuse me. If you will repeat the question, because I am fearful that we are starting into an [138] area of my concern. Could you read that?

MR. SHATTUCK: Read the question back.

(Record read.)

THE WITNESS: Do you want to ask me about Halperin? Why don't we get to that?

Q BY MR. SHATTUCK: Yes. Did you receive information from the FBI in connection with or concerning Morton Halperin?

A With regard to the Pentagon Papers?

Q Yes.

A I don't recall Halperin's name in regard to the Pentagon Papers, no. I think it was Ellsberg that did that.

Q Was there any discussion of the possible role of Morton Halperin in connection with the publication of the Pentagon Papers?

A I don't recall any discussion. It could have been. I don't recall.

Q Have you ever before seen the contents of that memorandum?

A I have no recollection of having seen it. I may have, but I have no recollection of it.

MR. SHATTUCK: John Ehrlichman has testified that he took notes at a meeting on June 17, 1971 attended by you, Dr. Kissinger, Mr. Haldeman and himself. The notes indicate that Kissinger described Daniel Ellsberg as being involved with "drugs."

I would like to have marked as Exhibit L, Mr. Ehrlichman's notes of 6/17/71 identified by him in a [139] deposition.

(Whereupon the above described document was marked as Plaintiff's Exhibit L for identification by the Notary Public and is attached hereto.)

Q BY MR. SHATTUCK: Do you recall Mr. Ellsberg being characterized at these meetings as involved with drugs?

A I am sorry. I didn't think this deposition was about Ellsberg. Do you want to relate it to Halperin? You must understand, I am trying to be—you wanted to—

Q For the record, I have a series of questions on this and that will be my next question, in fact.

A Why don't you lay a foundation for it? You must know how to do it.

Q Were you aware that Daniel Ellsberg was overheard on Dr. Halperin's wire tap?

A I have no recollection of that.

Q So you don't recall ever seeing any such summary letter from the FBI?

A I have no recollection of it.

Q Did you see any summary letter from the FBI at this time, not previously?

A I am referring to it. I have no recollection of seeing it at this time.

Q At this time, not previously?

A Yes.

Q I would like to repose the previous question. Was there discussion at these meetings of Daniel Ellsberg's [140] using drugs?

A I don't recall a discussion. I recall these meetings. I don't recall any specific things.

I do recall a discussion of Ellsberg by Kissinger, whether others were present or not I don't know. He discussed it several times because we were greatly concerned about the Pentagon Papers and their release and their publication because it was massively detrimental in its effect on our foreign policy.

Of course the fact was that it meant that our leak problem would become worse in the future. I remember that Kissinger volunteered that he knew Ellsberg and all that I can recall about—and I recall this incidentally before reading this memorandum because it was fresh in my mind—the case became rather well known. It was even better known that Dr. Halperin's, that he said that he was a brilliant student. He said however that he was emotionally unstable.

He recounted something and I understand that much of it was in the press, that in Viet Nam he was a hawk and used to ride around in helicopters shooting anybody that wore black pajamas on the ground that they might be the V.C.

As far as the use of drugs was concerned, I do not recall his using the term "use of drugs." He may have. I don't recall. I am just saying emotional instability.

I might have surmised from that, anything. But the use of drugs I do not specifically recall him saying.

MR. SHATTUCK: Mr. Ehrlichman's notes also indicate that on July 10, 1971, there was a meeting with him and Mr. Haldeman here at San Clemente at which you discussed the question of [141] appearances by witnesses before the Pentagon Papers grand jury. I would like to have marked as Exhibit M, Mr. Ehrlichman's notes of that meeting of July 10, 1971.

(Whereupon the above described four-page document was marked as Plaintiff's Exhibit M by the Notary Public and is attached hereto.)

Q BY MR. SHATTUCK: I would like to ask if this refreshes your recollection of such a meeting?

MR. CHRISTENBURY: Mr. Shattuck, this may be the only point at which we will substantially disagree. I will leave you to your remedies. I believe Dr. Kissinger's Answers to Interrogatories clearly demonstrate that he does not have any standing to inquire as to what may or may not have taken place at the Ellsberg—

Q BY MR. SHATTUCK: You mean Dr. Halperin?

MR. CHRISTENBURY: I am sorry. Dr. Halperin and so we object.

I don't think the questions are appropriate. He was a consultant. But, that certainly does not give him any standing to assert the constitutional rights of Dr. Ellsberg.

MR. SHATTUCK: I think that in response to Counsel's statement—

MR. SLOCOMBE: The question to which you referred had to do with what Dr. Halperin did in a trial which only started almost a year after that. In connection with this case, because of the statute, we are entitled to inquire as to any use of the wire tap fruits. It is our contention that the notes which are [142] the subject of this question may reflect a discussion of the fruits of the wire tap. Therefore, they are relevant and the questions about them are likely to produce relevant evidence.

THE WITNESS: Well now you have asked me, Counsel, the question, have I seen the notes.

Q BY MR. SHATTUCK: No. Does this refresh your recollection?

A No. You have asked me the question as to whether or not I have seen the memorandum with regard to Dr. Halperin's relations with Ellsberg and his brother and all that business and boyfriends and girl friends and the drugs. Is that was you are referring to?

Q No. I don't believe that is—

MR. CHRISTENBURY: Maybe we can strike an accord here because I certainly appreciate the relevancy of part of what you are saying. I think you are entitled to inquire as to the removal of the records and certainly any use that may or may not have been made of such records at the White House. I don't think on the other hand, general inquiries as to discussions regarding the Ellsberg trial, other than being particularly channeled to the specific wire tap material is appropriate. Maybe we can strike an accord on this area.

(Consultation off the record between Counsel for all parties.)

MR. CHRISTENBURY: Are we able to strike an accord?

MR. SHATTUCK: I would just hope that the following question would reflect a possible accord.

Q I would direct your attention to the notes that [143] we have just furnished to you and ask you the meaning of the sentence or the note:

"Grand Jury—don't worry re: taps on discovery of WTTS."

Does that refer in any way to these wire taps?

A I don't recall. I think you would have to ask Ehrlichman about that.

Q You don't recall any discussion?

A No. I recall the discussion about the whole matter of Ellsberg, the Ellsberg trial and—

Q Was there any discussion of whether suspects or possible grand jury witnesses might have been wire tapped?

A No. I don't recall any discussion of that. I do not—let me say when I say no that I spoke too quickly. I do not recall the discussion about the grand jury, "Don't worry re: taps on discovery."

I do not recall that discussion. Mr. Ehrlichman may recall what he meant. For example just before that, it says, "Rogers should be tapping more."

I have no recollection of what that could possibly mean. You will have to ask Mr. Ehrlichman.

Q Do you recall having any discussions in July of 1971 regarding the disposition of documents relating to the wire taps? This is another subject. So, we will leave this particular memorandum.

Do you recall having such discussions?

A Yes I did. That was here at San Clemente.

Q Who participated in those discussions?

[144] A Mr. Mardian.

Q And was Mr. Mardian directed to come to San Clemente by a member of your staff?

A I don't know. He came to report on the progress of the Ellsberg case. He gave a report on that. I don't recall what the progress was, what they had decided to do, whether they were going to indict and so forth.

I remember that I had come down strong against moving against members of the press. The question of whether

or not Ellsberg himself should be moved against was a very close one. Finally the Attorney General decided to move on the Ellsberg case.

Q In connection with the disposition of those documents, were there any discussions at your meeting with Mr. Mardian?

A Yes.

Q Had you directed Mr. Mardian or a member of his staff to get Mr. Mardian to come to that meeting for such a discussion?

A I don't recall directing him to come. But I do recall what happened as a result of the meeting and the discussion.

Q What was the nature of those discussions? What was discussed?

A It was at the last meeting that Mr. Mardian expressed a concern that he said was shared by Sullivan and by others apparently on my staff. I think he was referring to Ehrlichman, although he did not as I recall say so.

[145] It was that with the Pentagon Papers case out and with the Ellsberg matter come up, that the wire taps could become a very, very hot news issue. Then he expressed concern on two other matters, one was the possibility of their leaking, leaking and having them become—or we feared that leaks would then become—epidemic and running through the whole establishment. That is, of the whole bureaucracy.

The second concern was that Mr. Hoover might use the taps that he had in his possession for the purpose of having leverage on me so that I would retain him as Director of the FBI. Now I will comment on the second part and then on the first part.

The second part probably is not related. But it would be to the extent you see a student of history.

Mr. Hoover, in all the time I knew him, including my time as President, never threatened or blackmailed me. Whether he did with others, I cannot say. I would be surprised.

But nevertheless, as a matter of fact in the meetings I had with him, he always said that he was approaching the age of 75 and, when I had seen him at Easter this year, he had told me when he was under attack by Hale Boggs, the late leader of the Democrats in the House who died in a plane crash in Alaska, I told him I would stand by him.

He said, "I will resign any time you want me to, if you think it will help because I don't want to be a liability as this campaign comes along."

There were some on my staff—I had received memorandums from some and I am not indicating that they felt [146] that Hoover should resign because of his age, but there were other reasons as well that were expressed. This gets back to the Mardian view about Hoover, that he expressed. He said that he and others believed that Hoover might use the taps for blackmail purposes.

I said I didn't believe that. They said that the other point was that they might leak in any event, if they were left there at the FBI, with the Ellsberg thing coming out and the political atmosphere heating up and he felt and others concurred that they should be removed from the FBI to his office.

Mr. Sullivan by that time, had had a falling out with Mr. Hoover. Mr. Sullivan agreed with this particular procedure. So Mr. Mardian apparently picked up the package from Mr. Sullivan and took them to his office and later delivered them to the White House, where they were kept in the custody of Mr. Ehrlichman in his office and remained there until they were returned.

Q Did Mr. Mardian state to you what connection he believed there was between the possibility of these wire taps leaking and the Ellsberg prosecution?

A Absolutely not. They were two totally different subjects. His comments on the Ellsberg case were simply to bring me up to date on what was happening.

His comments on the wire tap had to do with Mr. Hoover and their concern about the use of blackmail, the possibility of a leak. There was absolutely no discussion

whatever of the taps insofar as the Ellsberg case is concerned.

[147] In fact, I was surprised a couple of years later to find that there was something in one of these tapes, apparently something in one that you referred to earlier in which there had been a Halperin/Ellsberg conversation or Halperin's brother and Ellsberg, having a conversation. I don't know what—that is as far as I heard about it then.

Q You testified that Mr. Mardian said the wire taps could become a hot issue. Did he set forth the basis for that statement? What was the basis for his statement that the wire taps could become a hot issue?

A Because at that time Mr. Hoover was under very great fire. Secondly, the Pentagon Papers had blown the idea, which up to that time was that honorable servants of the government agreed or disagreed with policy, but would not become traitors in effect and turn over highly classified top security information in breach of the law to publications and thereby endanger the national interest.

If that kind of attitude, which when it happened instead of there being an outcry of protest and condemnation from the press, brought almost universal praise not only for the paper that printed them including the Pulitzer Prize but for the individual who stole them—not stole them, but who liberated them. Under those circumstances, the possibility that some pip-squeak bureaucrat even in the FBI, would want to be a hero and say that he had some wire taps. That was the sort of thing.

As a matter of fact, after the Pentagon Papers case, we were desperately concerned about the possibility of the [148] proliferation of leaks, due to the fact that leakers then had in effect, become national heroes.

Q Did you know—

A And also gained a little money.

Q Did you know at this time which is July 12, 1971 that the Justice Department had already requested the FBI to search its indices to see whether or not Mr. Halperin had been overheard on the wire tap?

A No. I didn't know that. No, I am hearing that now for the first time.

Q Did you subsequently instruct Mr. Ehrlichman to take possession of those records from Mr. Mardian and to file them in his office in the White House?

A Yes. He told me that he was going to do so. I approved of it.

Q How long after your San Clemente meeting with Mr. Mardian was this?

A I don't recall the date. I think it was quite soon though, perhaps a month or two.

Q What were your directions to Ehrlichman in connection with taking possession of the records?

A To keep them safe and not to have them exposed.

Q Was there any discussion with Mr. Ehrlichman and Mr. Mardian concerning the possibility of an option to destroy those wire tap records in view of Mr. Ehrlichman's taking possession of them?

A I don't recall any discussion of destruction. I can certainly imagine that that was an option that could have [149] been exercised. Maybe it should have been.

In my view—many people have asked why I didn't destroy my famous tapes. I felt that evidence was evidence, and even though they had not been subpoenaed, so be it. They were not destroyed. They could have been.

Q Would there be a tape of your conversation with Mr. Ehrlichman in connection with his taking possession of the wire tap records?

A No. I think it occurred out here right after I had seen Mr. Mardian. As you know, there is no taping capability—we have no tape equipment in any of the —only in the White House, only two offices of the White House.

Q Turning your attention now to—

A None in the bedroom.

Q Turning your attention now to February, 1973, do you recall discussing a Time Magazine story concerning these wire taps with John Dean?

A Yes. There was some discussion of this story. I don't recall it specifically, though.

Q I would refer you again to Plaintiff's Exhibit J.

A Which page?

Q Did you agree?

MR. CHRISTENBURY: Which page?

Q BY MR. SHATTUCK: I am sorry. I believe it is the first page, page 1751. No, I am sorry about that. It is page 1752. Pardon me.

A Yes. I see something there.

[150] Q Did you agree with Mr. Dean that the Time Magazine story should be stonewalled?

A Yes.

Q What did that mean?

A Because there were inaccuracies in the story.

Q Was the story fundamentally inaccurate?

A There were inaccuracies in the story. We have found generally speaking, when you get into various publications that you can't go down the line and line by line say this is true and this is not true and et cetera.

My view is that there are inaccuracies in the story. I had not read it carefully.

Q The story was about these wire taps, the existence of these wire taps. Was that inaccurate?

A No. That part, no.

Q And did you approve the White House's denial of this story?

A I indicated that we should not comment on the story.

Q Do you know whether the story was in fact commented on by Mr. Ziegler subsequently to that?

A I do not have the information. You may have it. I don't have it here before me.

Q Did you believe that it would be embarrassing if these wire taps were confirmed, the existence of them?

MR. CHRISTENBURY: Well, I have a little trouble with that question. I can appreciate your earlier questions. But as to whether it would or would not have been embarrassing, I think [151] that that does not have any legal substance nor relevance as to our matter here.

MR. SHATTUCK: I would defer to my colleague, Mr. Slocombe for a response. He is the expert on responses.

MR. SLOCOMBE: The issue of good faith seems to be as to state of mind in denying the story. That is relevant.

MR. CHRISTENBURY: Well I think if you were to ask, as I believe that he did, why the story was denied and then I think the President responded. I agree with your point.

Whether it was or not embarrassing or what not I don't think has any legal substance. I would object and instruct the witness not to answer.

Q BY MR. SHATTUCK: Did you believe that it would damage national security to confirm the existence of these wire taps?

A At that point it could have been harmful, yes. But the story which basically, as I said, had some inaccuracies in it. Without seeing the story again and reading it all, I cannot respond to your questions completely.

Q In the absence of specific names and specific information, I would restate the question.

Would it have been damaging to the national security simply to confirm the existence of the wire taps in general?

A No. I believe that there had been some—that the existence of some wire taps was known.

In fact, I recall in some press conference responding about the number of wire taps we had compared with [152] the previous administration. What was not public knowl-

edge were the names of the people who were being wire tapped and it was the fact that the names of the people who were being wire tapped that I thought should not properly be commented upon, due to the fact that unless derogatory information was confirmed it would be unfair to that individual. In any event, I said unless derogatory information was confirmed, it would be unfair to the individual. Frankly, I had not had a chance to study the situation so as to reach a conclusion about them all. But just from reading this excerpt from the transcript, the story was denied because we could not and did not want to affirm a story that had some elements of truth but some elements of inaccuracy.

Q Do you recall any discussions you may have had in February or March of 19—

A Let me say that denials had nothing to do with Mr. Halperin.

Q Do you recall discussions you may have had in February or March of 1973 about the responses that Mr. L. Patrick Gray should make to questions about this Time story in his confirmation hearings as FBI Director?

A Is this about Mr. Halperin again?

Q This is about the Time story which referenced the wire taps.

A Any reference to Mr. Halperin? Any reference to Mr. Halperin's wire tap?

Q The question as stated refers to the wire taps of which Mr. Halperin was a part, that is correct.

[153] A Yes. I had discussions with Mr. Gray. I don't recall it at this point.

Q Was it in connection with his testimony at the confirmation hearings?

A Yes.

Q And concerning this Time Magazine story?

A I don't recall. I don't recall the conversation no. I don't recall the conversation with Mr. Gray being with regard to the Time Magazine story.

I recall just a general conversation about his duties as FBI Director as to whether he could get confirmed and how he could handle the problem and so forth.

Q Was this a face-to-face conversation or was it over the telephone?

A Yes.

Q Was it in your office?

A Yes.

Q In the Oval Office in the White House?

A Yes.

Q Would it have been taped?

A Yes.

Q Well, we have an outstanding motion pending before Judge Smith for tapes of this nature. I would simply observe for the record that this is—

A That is probably your best—

Q It is probably in one of the tapes.

A I can't really do it on the basis of my recollection. I remember when he was in the office. It would [154] have been taped in that period.

Q Do you recall Mr. Gray's testimony at his confirmation hearings that he searched the FBI records and found no record of these wire taps?

A No. I recall it now that you raise it. I recall the circumstances under which his name was withdrawn.

Q Do you know if anyone in the White House made an effort to inform Mr. Gray that the records of his wire taps were in fact in the White House?

A I can't help you on that question.

Q Was Mr. Gray's testimony on this subject misleading in light of the fact—

A I just told you I am not aware of the testimony. I am not aware of the contents of the testimony. I would have to see it again to—

MR. SHATTUCK: We will mark as Exhibit N a copy of the testimony of Mr. Gray before the Senate Judiciary

Committee. I will show you the question from Senator Kennedy on page 1756.

> "Did you talk to anyone about it at the White House or is it just a matter of your answer is 'I just checked the record and we didn't find any authorization and we didn't do anything else.'"
>
> The answer was:
>
> "MR. GRAY: That is my answer, that we checked the records and indexes of the Federal Bureau of Investigation, yes, sir."

A BY MR. SHATTUCK: And the question is does this [155] refresh your recollection of Mr. Gray's testimony on the subject?

A No. I don't recall reading the testimony.

(Whereupon the above described document was marked as Plaintiff's Exhibit N for identification by the Notary Public.)

(Brief pause.)

Q BY MR. SHATTUCK: Were you aware at some point during the spring of 1973 in approximately April of 1973 that Judge Byrne in the Pentagon Papers case had issued a series of orders requiring the disclosure of any and all wire taps to the defense?

A Yes.

Q Or their attorneys or consultants in this case?

A Yes.

Q Were you aware that that order ran to Dr. Halperin in it? In other words, that Dr. Halperin was named within the order as one of the persons?

A I was not aware of that, no.

Q On May 10, 1973, the prosecution in the Ellsberg case informed Judge Byrne that Daniel Ellsberg had been overheard, but that the records could not be located? Do you recall reading stories or otherwise?

A I learned about it, yes.

Q Did you participate in discussions about whether to notify the Justice Department or the FBI that the missing records were in the White House?

A Yes.

[156] Q Prior to the dismissal of this case, of the Ellsberg case by Judge Byrne?

A Yes. As a matter of fact, Counsel, you are quite aware of the fact I am sure because it was even published and might as well be public again and this will only make the a.m. papers, I am sure—but when this matter became an issue, it was brought to my attention by Mr. Kleindienst, then acting Attorney General and Mr. Peterson and the question was raised as to what about the wire tap files. I think it was on a Sunday afternoon. They asked me and I said to turn them over and they did at my direction.

Q Do you recall the date on which you had this conversation?

A No. No, that would be in the judge's record. It was on a Sunday.

Q Do you have it clear in your mind? This is a reference to the wire taps and not to the break in at Dr. Ellsberg's psychiatrist's office.

A Well certainly the break in was involved, as well. But the wire taps were also furnished. But I gave directions for both. I know it was done on both. I must say that that is thinking back. I am glad that Counsel remembered that there were two different problems. There was the problem with regard to the fact that there had been a break in and that was turned over. Then the wire taps were also turned over. I believe that was before the trial was dismissed.

(Discussion off the record among all attorneys.)

[157] THE WITNESS: Counsel informs me that I am in error. I am glad that we have the record, so we have the record straight. Actually, the wire taps—the judge dismissed the case. It was after that that the wire tap files were discovered and, not discovered—but were found again and liberated from Mr. Ehrlichman's office and were turned over to the court. So it was after the case was dismissed.

Q BY MR. SHATTUCK: Did you participate in discussions after the Justice Department notified the court that in fact, Dr. Ellsberg had been overheard and the dismissal of the case. Did you—

A At what period?

Q This would have been about a two-day period between May 10 and May 12.

MR. CHRISTENBURY: Excuse me, if we could consult?

(Conference of the record.)

THE WITNESS: I understand that it did not get there until after the case was dismissed. So, if any discussion took place it must have taken place after the deadline. But I approved sending them out.

Q You knew at the time that the Justice Department notified the court that there had been a wire tap but it couldn't find the records, that the records were then in Mr. Ehrlichman's office; is that correct?

MR. CHRISTENBURY: Is that a question or a statement?

MR. SHATTUCK: That is a question.

THE WITNESS: Then state it as a question.

Q BY MR. SHATTUCK: It is a question.

[158] A Don't put it in my mouth. I know you didn't intend to. Restate the question, if you will.

Q I would be happy to restate the question. The question is, did you know at the time that the judge was notified that Mr. Ellsberg had been overheard on a wire tap but the Justice Department couldn't find the records? Did you know that the records were in Mr. Ehrlichman's office?

A At what time? When would it have been?

Q Just after the judge was notified.

A After the case was dismissed?

Q No, after the judge was notified before the case was dismissed.

A I don't recall. I can't recall. If I was asked, I would have said so. I would have told them so because when the Attorney General and Mr. Peterson informed me that we should turn over the information with regard to the break in, I directed and had they asked me about this, I would have told them so. I don't know whether they did or they did not. If I were asked I did. But I can't recall it at this point.

Q Did you know through this period and I mean by that from the time when you had directed Mr. Mardian to turn the records over to Mr. Ehrlichman and then he had brought them to the White House, did you know throughout that period which was approximately a year and a half that the records were in the White House?

MR. SCHWARTZ: Excuse me. I think that is a misstatement. I don't think the testimony was that the President directed Mr. Mardian to turn them over. I don't think [159] that that was the testimony. I think the testimony was that Mr. Ehrlichman asked and they were permitted to be brought over. I don't think the President testified he ordered Mr. Mardian to bring them to Ehrlichman's office. Maybe that is why the question might be ambiguous.

MR. SHATTUCK: I appreciate Counsel's observation. I would ask the question segmented.

Q BY MR. SHATTUCK: Did you instruct in July of 1971, Mr. Mardian to turn the records over to or to take possession of the records from Mr. Sullivan and then subsequently to turn them over to Mr. Ehrlichman?

A Mr. Mardian said he wanted to—he thought he should bring the records to his office. Then he had a discussion with Mr. Ehrlichman, as I recall and said that he thought that they should go to Mr. Ehrlichman's office. I think Counsel for Mr. Ehrlichman—

MR. SCHWARTZ: Yes.

THE WITNESS: Mr. Schwartz, I am sorry. I don't recall my telling Mr. Mardian to deliver the records to Ehrlichman's office. Is that Ehrlichman's recollection? I don't quite get your question there.

MR. SCHWARTZ: I was not asking a question. I simply wanted the record to be clear that the question assumed a fact which was not in evidence, at least you had not testified to it. This was only for clarifying the question.

THE WITNESS: Right. I cannot really tell you whether or not Ehrlichman initiated it or Mardian initiated it or the two together. All I know is that Mardian felt that he didn't [160] want them in the Justice Department and brought them to the White House and Ehrlichman kept them in his office. That is what happened to them.

Now the second point I think which goes to the heart of your question is that as far as the wire tap material was concerned, I had no knowledge that there was information in the wire tap file which would bear on the Ellsberg trial and so when we talked—because you see you are getting back to the series of questions you asked me about the conversation Dr. Halperin had with Dr. Ellsberg when the dope was mentioned in getting a baby sitter and all of that stuff that was discussed and I told you the only recollection I have with regard to Ellsberg was rather—shall we say—esoteric. That was from Henry Kissinger, based on his own knowledge and not based on information relating to anything that he had seen on the wire taps. He didn't have to have the wire tap. He had seen it firsthand. That is why he said that he was brilliant and he said those things and some other things—that depends on your point of view. Sometimes people can be on dope—but whatever the case might be, he was bright.

Now insofar as the wire tap files are concerned and the Ellsberg case is concerned, they would have had in my view, no bearing whatever on the decision Judge Byrne reached before he even got them and certainly there was no intention on our part to move the files from the Justice Department to the White House because we were afraid or somebody was afraid that there was one overhear in there involving Halperin and Ellsberg that might taint the Ellsberg [161] trial. I am stating that as a fact, as far as my recollection is concerned.

Q As of May 10?

A Now that is inconsistent with your theory, but that happens to be true.

Q As of May 10, 1973, did you know that Dr. Halperin had in fact, been wire tapped?

A As of May 10?

Q Yes.

A I don't recall.

Q As of May 10, 1973?

A May 10, 1973? I don't recall.

MR. CHRISTENBURY: Mr. Shattuck, I think that there is a question as to this. He recalled it at the time. I think he testified that he had knowledge back in 1969—

THE WITNESS: Halperin's wire tap, not Ellsberg. But Halperin—I know Halperin was wire tapped back in 1969.

Q And did you know—

A Incidentially, he was wire tapped not only because Dr. Kissinger put him on his list but because Mr. Hoover urged that he be put on the list.

Q Did you know from reading the paper or from otherwise receiving a communcation that Judge Byrne had ordered that the wire taps on Halperin be turned over on May 10?

A No. I didn't follow the trial that closely.

Q Did you ever discuss the Halperin tap with David Young?

A No, not that I can recall.

[162] (Conference off the record.)

MR. SHATTUCK: I have no further questions.

MR. CHRISTENBURY: I have just three brief questions.

EXAMINATION

BY MR. CHRISTENBURY:

Q Mr. President, in May of 1973 and prior to that, did you at any time know that the court in California in the

Ellsberg case had directed the government to disclose whether Dr. Ellsberg or Dr. Halperin had ever been overheard on an electronic surveillance?

A I cannot recall. I cannot recall. If there is any testimony to that effect that might be able to refresh my memory—but I have no independent recollection of that, no.

Q Two other brief questions with regard to the termination of this surveillance on Dr. Halperin. Did you know of your own knowledge who authorized that termination of the surveillance on Dr. Halperin?

A No. I don't know of my own knowledge of that.

Q Specifically, do you know whether or not Mr. Mitchell authorized the discontinuation of the surveillance?

A No. As I indicated in earlier questions, I assumed Mr. Mitchell as the Attorney General would have authorized the termination since the Attorney General authorizes the institution.

However, I don't know of my own knowldge whether he authorized it or didn't authorize it or whether he [163] knew about it. I don't know.

MR. CHRISTENBURY: No further questions.

THE WITNESS: The other point I think should be understood though is that this question that you asked relating to—

MR. CHRISTENBURY: The court order?

THE WITNESS: The court order on the Halperin wire taps, I simply haven't any independent recollection. I do not recall. The only thing I know is that I had no concern and no knowledge of it. I had no knowledge of turning over the Halperin wire taps.

I knew Ellsberg was not on that wire tap list and there was one conversation which I think just as well did not become public because it might have been embarrassing to all parties concerned.

That was one conversation. But I didn't know about that. I don't see any reason why Dr. Halperin or Ellsberg would want it known.

Q BY MR. CHRISTENBURY: But specifically during this time you did not know of the court order to require the government to disclose the electronic surveillance, if any, of Dr. Halperin?

A I don't recall being informed of it. If I was informed of it, I would have complied with it because I would have said to get the tapes wherever they are or the summaries and send them out to the court, just as I followed the recommendation of my Attorney General and Deputy Attorney General in sending out the information with regard to the break in.

[164]

EXAMINATION

BY MR. SCHWARTZ:

Q Mr. President, I just have a couple of questions to clarify. Did I understand you to say that after the San Clemente meeting, Mr. Mardian came out on the question of what disposition was to be made of the logs? Did I understand you to say that your recollection was that the course of action to be pursued was that the tapes were going to be — the logs should be provided or that they should be taken from the Justice Department or was the matter resolved at the time of the July San Clemente meeting?

A That was a hypothetical question Counsel asked whether or not we considered the option, as I recall, of destroying the logs over preserving them and so forth.

My answer was that I am not confident that there might have been discussions, but that insofar as bringing in the fact of my own tapes, some wondered why I did not destroy them as I could have. I said I did not.

As far as this was concerned, nobody seriously considered destroying these summaries. The decision was made that they should be removed. Sullivan would deliver them to Mardian and then later on he would deliver them to Ehrlichman. How that transfer worked out I do not know.

But knowing Ehrlichman, I know Ehrlichman would [165] have been absolutely circumspect with regard to seeing that they were not tampered with in his possession.

Q As to the resolution made in the San Clemente meeting, the original July San Clemente meeting, that was to have the tapes transferred from Sullivan to Mardian; is that correct? Was that the decision that was made?

A Yes. Mr. Mardian was to pick them up.

Q Mardian was to get them. Now was a resolution made at San Clemente as to the logs that were to be transferred to the White House or was that made at a later meeting that you referred to?

A I think it was made at a later meeting. But, it could have been made at San Clemente. It was just brought to my attention—I don't recall that specific meeting. We have no records. I think Mr. Mardian and Mr. Ehrlichman had a conversation and worked that out.

Q In answer to one of Mr. Shattuck's questions, you indicated you thought that Ehrlichman had talked to you at San Clemente about Mardian's discussion. Is it possible that that discussion did not occur at San Clemente?

A I think I stand corrected.

It depends how long we were here at San Clemente at that time. I think it was a rather long stay. It is possible that we could have talked at San Clemente. It is also possible that it did not occur until later when we returned to Washington.

Q Would it refresh your recollection if I told you that Mr. Ehrlichman has testified previously that in fact, [166] the tapes were not—the logs were not transferred from Mardian's office to Ehrlichman's office until late September or early October of the same year?

A Then my recollection with regard to the San Clemente meeting is wrong. It was later at the White House or at Camp David or wherever we were. If I participated in a discussion and it took place then and not out here, that is correct.

Q Now you also said that you thought that you had a discussion with Ehrlichman or Mardian where the decision was made to in fact, transfer the logs from Mardian's office to Ehrlichman's office.

A I think that discussion was with Ehrlichman. It could have been with both. But, my recollection is that it was with Ehrlichman. But I actually do not recall. The notes may show it. I have no notes of what occurred at that time.

Q Would it refresh your recollection if I told you that—I don't have the page number. But Mr. Ehrlichman's testimony was that after Mr. Mardian had approached him, some 60 days or so after the July San Clemente meeting and said he wanted to transfer them to his office, he testified that he went and spoke to you and you said, "Why don't you do it?"

Would that refresh your recollection about who was at the meeting?

A Yes. That's right. It was Ehrlichman. That is exact. He is very precise in his notes. His recollection, I think would be accurate. That is undoubtedly the way it happened.

[167] Q Then you said that it was okay and then—

A Yes.

Q You said that that was what they ought to do?

A Yes. To me it was just a matter of getting them in a safe place where the possibility of their being used in an improper way or of their leaking and so forth would be reduced. I emphasize again it was not because I had any concern about any specific log involving Dr. Halperin.

MR. SCHWARTZ: Thank you, Mr. President. I have no further questions.

(Whereupon it was stipulated by and between all counsel present that the deposition may be signed before any Notary Public.)

/s/ _____

WITNESS

STATE OF CALIFORNIA

ss.

County of Los Angeles

I, Sally Yerger, C.S.R. and Notary Public for the County of Los Angeles, California, certify:

That the foregoing deposition of RICHARD M. NIXON was taken before me pursuant to Notice and Court Order at the time and place therein set forth, at which time the witness was put on oath by me;

That the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me, and were thereafter transcribed;

That it was stipulated by counsel that said deposition may be read, corrected and signed by the witness pursuant to Rule 30 (e) of the Federal Rules of Civil Procedure;

That the foregoing deposition is a true record of the testimony and of all objections made at the time of the examination.

I further certify that I am neither counsel for nor related to any party to said action, nor in anywise interested in the outcome thereof.

IN WITNESS WHEREOF, I have subscribed my name and affixed my seal, this 24 day of January, 1976.

/s/ _____

SALLY YERGER

Notary Public in and for the County of Los Angeles, State of California

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STATE OF CALIFORNIA
ss.
COUNTY OF

That on , 19 , the foregoing deposition was submitted to RICHARD M. NIXON, the witness, for examination and was read by the witness, at which time any changes desired were entered upon the deposition, and that thereafter the deposition was signed by the witness before me.

/s/ _____
Notary Public for the County
of
State of California

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1187-73

MORTON H. HALPERIN, ET AL., PLAINTIFFS

v.

HENRY A. KISSINGER, ET AL., DEFENDANTS

Washington, D.C.
Thursday, June 19, 1975

Deposition of JOHN N. MITCHELL, a Witness herein, called for examination by Counsel for the Plaintiffs in the above-entitled action, pursuant to notice, the Witness being duly sworn by JOANNA B. LICHTMAN, a Notary Public in and for the District of Columbia, at the offices of Caplin & Drysdale, 1101 Seventeenth Street, N.W., Washington, D.C., at 2:05 o'clock p.m. Thursday, June 19, 1975, and the proceedings being taken down by Statement by JOANNA B. LICHTMAN and transcribed under her direction.

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Dr. & Mrs. Morton H. Halperin

[4]

PROCEEDINGS

Whereupon,

JOHN N. MITCHELL,

a Witness herein, called for examination by Counsel for the Plaintiffs, having been first duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR PLAINTIFFS

BY MR. SLOCOMBE:

Q Mr. Mitchell, when you were Attorney General in the early months of 1969, did your functions include the approval of national security wiretaps?

A They did.

Q Did you establish a procedure when you took office with respect to such wiretaps?

A I'm not quite sure that I understand what you mean by procedures. You mean procedures for the submission of material for my approval?

Q Yes.

A Approvals were made by me after submission of a request for authorization by the Director of the Federal Bureau of Investigation.

Q Could you describe the—did you give instructions with respect to what you wanted included in the submission that [5] was made to you?

A I did not. I reviewed the practice that was in place when I arrived at the Justice Department, and we continued to follow that.

Q What? On the basis of that, what was normally included in a request for authorization of a national security wiretap that came to you?

A The reasons why the party requesting the tap felt that it was necessary in the interests of national security.

Q You speak of the party requesting the tap. How was that party identified?

A Well, it would be identified in various ways. Sometimes it would be initiated directly by the Federal Bureau of Investigation, and sometimes by other agencies of the government.

Q If it was initiated by another agency, would that agency be specified by name, or would an individual in that agency be specified?

A My best recollection is that it probably happened in both instances, but if it was by name, it would be clear as to which agency was involved in the request.

Q But if it was by name, it would also be clear that if it said Secretary Laird has requested that a tap be put on such and such a place, that would clearly convey to you that it [6] was indeed Secretary Laird; if there was a person identified, your understanding was that that was a person who had, in fact, made the request to the FBI?

A Well, that would be the normal process where a name was involved, yes.

Q You said that the request included the reasons why it was necessary for the national security.

Could you describe what kind of information you expected to receive or you insisted on receiving before acting on a request? Was it simply a formal recital that in the interest of national security I request a wiretap or was there some substantive information as well?

A I think you've just put a few words into my mouth. I said in some instances. If not, that was what I intended to say.

Frequently, of course, the matters would be discussed orally with the individual requesting the tap or with the Director or his assistants in the FBI relating to the conversation between the Director of the FBI or somebody else in the FBI and the party making the request for the tap where the materials would be outlined. At other times it would be a statement in the request for the authorization as to the reasons for it or the persons requesting it.

[7] Q But it was your practice to have received either orally or in the request itself a fairly full substantive description of why the request was being made before you would approve it?

A I don't think it was necessary to have a full substantive statement as to the—the matter need not be full. They would outline the reasons for it very briefly and simply and this would be particularly true in instances where there had been prior oral discussions on the subject matter prior to the time the request came over to me from the Bureau.

Q Did the request that came to you include a statement as to why this particular subject had been selected for wiretapping?

A Sometimes they did and sometimes they didn't. It would generally be the basis on whether there had been the oral discussions prior to the submission of the request.

Q You mean that sometimes you would know from prior discussions why this particular individual was being tapped in this connection?

A That is correct.

Q Did the request that came to you include a statement as to whether the requestor believed a wiretap as opposed to some other investigative procedure was necessary?

[8] A In some cases yes.

Q And what cases did not include such a statement?

A Well, in wouldn't include a statement in cases where the oral conversations had made determinations, had made determinations that that was the basis upon which to proceed.

Q When you had one of these oral conversations, did you make a practice of making a memorandum of that conversation or in any other way reducing it to writing so it would be reflected in the record of that particular wiretap?

A I did not.

Q Did the request include any statement as to the expected duration of the wiretap?

A Some did and some didn't.

Q Was there any pattern as to whether they would or wouldn't include statements?

A I think the only answer I can give to you in that case is that in most national security taps they were on for very extended periods and it was assumed that the taps would be handled in accordance with the policy that had been established in the Attorney General's Office with respect to the request for renewals of the taps.

Q I'd like to come back to the question of renewals, but if we can put aside those national security wiretaps which [9] had to do with the gathering of foreign intelligence information, as opposed to the actual specific acts of wrongdoing, did those, were those requests treated in a different way?

A Well, let me point out that with respect to your first statement, or in your question, that doesn't necessarily mean they're exclusive, as you're well aware.

Q I understand.

A There can be what you refer to as gathering of intelligence and also the ascertaining of people who were engaged in wrongdoing. There was to my recollection no distinction between the two, as you have stated.

Q Was any distinction drawn in the period May of 1969 between taps on United States citizens and taps on foreign nationals?

A With respect to what?

Q With respect to the procedures that were necessary before such a tap would be instituted?

A No.

Q Would you describe the procedure which, did you establish a procedure with respect to renewals and renewed authorizations for national security wiretaps?

A There was either in existence or I established a procedure under which after a period of time which—my [10] recollection is it was 90 days—if the tap was to continue a resubmission was made by the Director of the FBI in

which would be listed, of course, the period of the existing tap, plus a reference to the effectiveness of the tap or an outline of the reasons why it was requested it be continued.

Q When you received one of these requests for a renewal and the original tap had been requested by another agency, did you regard yourself as under an obligation to make an independent judgment whether to continue the tap?

A Well, I made a judgment. It might very well be based on the recommendation of the other agency, but I made the judgment.

Q Would that also be true of the initial decision to institute a tap that even though the requests were made in the name of the Department of Defense to continue our example, you would take that recommendation into account, but you were the person who was responsible for making the choice.

A Well, if you confine it to this illustration that you use in connection with the Department of Defense, yes.

Q Your answer suggests that there is another illustration under which you wouldn't feel under obligation to make an independent judgment.

A Well that is correct if I had instructions from [11] higher authority.

Q Well who would be higher authority?

A Well, outside my wife, the President of the United States.

(General laughter.)

Q Were there occasions when a security tap, a national security tap, was in operation when you received reports other than reports on the fruitfulness of the tap that was contained in the renewal?

In other words, did you from time to time receive reports of the fruits of a wiretap?

A In varying degrees and occasions, yes. I did not receive all of the reports on the fruits of all wiretaps. There

were instances where the Department was directly involved in which I would get them. There were the other instances in which summaries would be provided to me or matters of personal interest that the Director, or whoever was preparing the documents for the Director, would feel that the subject matter would be of interest to me.

Q Do you understand that the procedures which you used differed in any significant way from the practices of your predecessors with respect to national security wiretaps?

A I believe that they were the same and I base that [12] belief on a review of the process with my predecessor, which we went over personally and with a review of the files that were in the Attorney General's office when I arrived.

Q And the highlights of that process were first that when the request came to you it identified the requestor if it was other than the FBI?

A That's correct.

Q That either the request itself included a statement of the reasons why a tap, as opposed to some other investigatory procedure, was necessary or you had obtained that information through an oral conversation with somebody else.

A That is correct.

Q And that there was a procedure for regular renewal which included an evaluation of the usefulness of the tap up until the point of the renewal.

A There was a procedure for renewal under which the request for the renewal would customarily contain an evaluation of the circumstances.

Q What do you mean by an evaluation of the circumstances?

A Well, it would depend upon the individual case that was being processed at the time. It might refer to the nature of the ongoing desirability of such a tap or it might contain information that had been obtained through the tap which [13] justified their request for the extension.

Q Did the occasion ever arise in which nothing useful had ever been obtained from the tap during the initial 90-day period in which you received your request to continue the tap nonetheless?

A Oh, yes, many of them.

Q And what was the basis that was given for continuing those taps?

A The nature of the subject being tapped and the potential for obtaining information in the future.

Q Would it be correct to say that you would have expected, if nothing useful had been obtained in the initial period you would have expected some affirmative statement as to why it was necessary to continue the tap before you would approve a renewal?

A Well, that would depend entirely on the circumstances, the situation where the tap was being placed.

There are institutions in which a continuity of tap is most desirable. There are other cases where they are non-productive and there are withdrawn.

Q But if the subject of the tap were an institution, although nothing useful had been turned up in the last 90 days, the nature of the institution which justified the initial tap, [14] that would be reflected in the renewal recommendation to you, that would be in the statement that the initiator wanted to go on?

A Well, it might or it might not be. It might be an institution where, based on my own information in respect to it it would be desirable and I would authorize its continuance.

Q This 90-day renewal recommendation was in writing?

A To my recollection, which is very vague on the subject matter, is it was a directive from the Justice Department to the Federal Bureau of Investigation.

That is my recollection. I'm not certain.

Q Establishing the general procedure?

A Establishing the general procedure with respect to renewal.

Q And each specific renewal request was in writing?

A Yes.

Q And it required your signature before the tap would be continued?

A That is correct.

Q And just for the record, though you in fact personally signed these, both the initial request—it was your general practice that you signed these initial requests?

A To my knowledge every national security tap that was [15] authorized while I was in office I personally signed.

Q Did you give any instructions with respect to record-keeping on the national security wiretaps?

A Instructions?

Q Let me ask you in a different way. Were you aware of the practices with respect to the records which were kept on national security wiretaps, whether or not they resulted from your affirmative instructions or from the carry-over of existing instructions you found when you came into office?

A Yes, there was a straightening out, I think, is the best way to put it, of the records that were maintained in a safe in the anteroom of the Attorney General's office to provide a complete index and chronology of the existing national security taps and a filing of the references to the national security taps, which was also maintained in this particular safe.

Q This was—these were the records which were kept in the Justice Department as opposed to the FBI?

A That is correct.

Q Were you aware of the FBI's practice with respect to records on these taps?

A I was not.

Q Did you know whether a practice was made of recording [16] in the so-called ELSUR index the persons that were overheard on national security wiretaps?

A First of all, the word ELSUR did not mean anything to me while I was at the Justice Department. I've since read it or heard of it.

Secondly, I had no detailed knowledge of the filing procedures of the FBI.

Thirdly, there had been a number of discussions with me while I was Attorney General about the methods by which the Federal Bureau of Investigation would make available to the Criminal Division or U.S. Attorneys or others involved information with respect to overhearings.

Q And what did you understand to be the raw materials from which they drew the information made available to the Justice Department?

A Well, their files in whatever form they were kept and from whatever source they came, depending on whether it was the actual tape or whether it were memorandum prepared from the tapes by people overhearing the conversations.

Q Did you have any knowledge of whether the FBI made a regular practice of indexing the information which they obtained through wiretaps?

A It was assumed by me that they did because of the [17] response that came from them from time to time in connection with various proceedings.

Q Apart from the wiretaps, the so-called 17 wiretaps, one of which is at issue in this litigation, prior to May of—1968.

THE WITNESS: Can I go off the record for just a minute?

MR. SLOCOMBE: Yes.

(Discussion off the record.)

BY MR. SLOCOMBE: (Resuming)

Q For purposes, without committing anybody, as to whether there were or were not 17 wiretaps, or what's at issue in this litigation, the 17 wiretaps means the Kissinger wiretaps, the ones which include the Halperin wiretap as distinguished from the regular national security wiretaps.

Apart from this class, were you aware of the use of wiretaps in other efforts to detect the source of leaks of national security information?

A The answer to your question is yes.

Q Were the procedures used in initiating the wiretaps in those cases the same as those which you have described as applicable in other national security cases?

A Yes. You say the procedure, based on the procedures that I've previously testified to, yes.

Q The ones that you've just described, describing the [18] requests for the regular renewal?

A Yes.

Q Those procedures were used for leak taps, as well as for other kind of offenses?

A That's correct.

Q Did the FBI have a practice of asking the Justice Department if it would agree to prosecute prior to recommending the tap of a leak suspect?

A To my recollection there were no such discussions that I participated in.

Q When a tap was used in a normal case in connection with an effort to detect the source of leaks were other investigative procedures undertaken as well?

A In some cases yes and in some no.

Q In what cases would other investigative procedures not be undertaken? I don't mean by name but what would govern a decision not to do anything other than put a tap on?

MR. HUNDLEY: In leak cases?

BY MR. SLOCOMBE: (Resuming)

Q In leak cases.

A Well, there would be a number of factors. Number one, what was the product of the tap, what were the circumstances involved, what were the individuals that were the subject of the [19] investigation? There could be a number of circumstances.

Q I'd like to turn now from the general procedures to this particular wiretap.

Do you recall a meeting between, in the latter part of April, apparently on April 25th at Camp David, between yourself and President Nixon and J. Edgar Hoover?

MR. HUNDLEY: What year, sir?

BY MR. SLOCOMBE: (Resuming)

Q 1969.

A I've done some research on this based on my logs. I've answered this question in previous cases and I'd like to make reference to my notes.

(Pause)

A In answer to your question I can state that my logs maintained in the Justice Department show that I was at Camp David in the afternoon and evening of April 25, '69 and the morning of April 26, 1969, but I have no independent recollection of Director Hoover being there or of any discussion in this area.

Q Do you have a recollection of any meeting attended by you, Director Hoover, President Nixon, and Dr. Kissinger during approximately this period of late April or early May, 1969?

[20] A I don't have a recollection of any single, specific meeting at which those four people that you named were present.

Q Do you recall any discussion of the question of leaks in this time period?

A Yes.

Q Could you describe those discussions?

A To the best of my recollection I recall discussing with the President, with Dr. Kissinger, and with Director Hoover the subject matter, not necessarily at a single meeting but discussing the circumstances that prevailed at that time with respect to the leaks that had so concerned Dr. Kissinger and the President.

Q And what was the gist of those discussions?

A Well, the gist of the discussions were that the leaks were harmful to the national security and the foreign policy of the United States, and that it was eminently desirable to find out where they were coming from and to do everything possible to stop them.

Q Was there specific discussion of wiretapping in that connection?

A There was.

Q What was the gist of that discussion?

A Well, my recollection is that Mr. Hoover pointed out the [21] fact which to me was obvious, that the most immediate means at hand were to use wiretaps in order to help the process that was being undertaken.

Q Did he explain why it was the best way to do it?

A I have no specific recollection of it but I believe it was pretty obvious to those who had participated in the subject matter of the discussions that wiretapping would be the quickest and best way.

Q What was it about the use of wiretapping for this kind of problem that made it obvious it was the best way to do it?

A Because all through the history of law enforcement it's been found to be the best source of information on a subject like this.

Q Was there any discussion of individuals who might be responsible for the leaks?

A Yes, there was discussion of that subject matter.

Q Do you recall whether Dr. Halperin's name arose in connection with that discussion?

A I have a recollection that it did, yes.

Q Who raised the name?

A I'm not certain but I believe it came, I have a recollection that it came under a review of people who were [22] either on the National Security staff or in the other departments like State and Defense that had access to materials that might be the subject of the leaks.

Q Do you recall any other names which arose in a similar connection?

MR. CHRISTENBURY: Excuse me, Mr. Slocombe. So that I understand your question, are you seeking general discussions of people who might have been involved in leaks or people who were the subject of or who were being considered for the subject of an electronic surveillance?

MR. SLOCOMBE: If I understand your question, the former; that is, who, did other names arise as to people who might be responsible for the leaks—

MR. CHRISTENBURY: I guess that—

MR. SLOCOMBE: Well, we haven't yet established that Dr. Halperin was identified as a person who was selected for wiretapping in these discussions.

MR. CHRISTENBURY: I guess my problem is, of course, as you can appreciate in the area that we have traditionally taken a position that other people who were wiretapped during this period, that information is irrelevant to this litigation. If you can steer your questions apart from disclosure of that information, I think that would be—

[23] MR. SLOCOMBE: I haven't yet asked who they were but I might. Mr. Mitchell has not yet said anything about connecting wiretapping individuals. He's described the discussion of a number of individuals who had access to information. I've asked him whether he recalls whether anybody else's name was mentioned in that connection.

MR. HUNDLEY: And I think he answered yes.

[24] THE WITNESS: Well, I will, on advice of Counsel.

MR. HUNDLEY: Well, I will object. I don't object his answering yes, other names were mentioned, but I think I would instruct him not to answer what the other names were. He'll answer all questions about, you know, Mr. Halperin and what not. But I just don't see the relevancy of getting into other people who might have been considered in this regard.

MR. SLOCOMBE: Well, I would like to ask a number of questions which I think will not involve anybody else's name.

MR. HUNDLEY: That will be alright.

MR. SLOCOMBE: Then we'll come to question of the other names.

MR. HUNDLEY: Fine.

MR. SLOCOMBE: (Resuming)

Q The people who were discussed, were they also other people who were described as having access to the information which had been leaked?

A My recollection is that they were.

Q Was it a large number of people?

A My recollection is that there were a large number of people. We are going back to the circumstances under which Mr. Halperin's name—or is it Dr. Halperin—Dr. Halperin, excuse me—Dr. Halperin's name was discussed as you have raised.

[25]Q That's right.

A And to answer your question fully, there were a substantial number of people discussed at that time or times. But it was reduced to a lesser number for purposes of concentration than the total number discussed at that time, if I make myself clear.

Q In other words, the initial discussions were of how many people know about such and such a subject which has been leaked.

A I think that is a reasonable characterization.

Q And the answer was a substantial number.

A There were a substantial number discussed as potentials, not a substantial number that knew about the subject matter.

Q Who was it who, among the four of you at this meeting, or series of meetings, who had personal knowledge of who had access to various kinds of national security information. Did you personally?

A I did not.

Q To your knowledge, did Director Hoover?

A I do not recall the Director initiating any names for discussion.

Q So it was presumably either President Nixon or Dr. Kissinger?

[26] A I think that is a reasonable presumption.

Q As between those two, did President Nixon identify individuals within the NSC staff, the Defense Department, the Air Staff and the State Department, who, of his own knowledge, had access to information?

A It is my recollection he did, in a limited way.

Q What do you mean in a limited way?

A That his subject matter in this area was not as wide and broad as Dr. Kissinger's.

Q If I understand your description correctly, as these discussions progressed, you either by name or by category understood that a relatively large number of people had access to the information?

A No, that is not correct. My answer was that there was a substantial number of people discussed. There was a more limited number of people who were discussed in the light of the potentials of having access to the information.

Q I see.

In approximate terms, how large was that more limited number?

A I want to make it clear that this was not just one meeting at which the total panoply of individuals discussed. This happened over a period of time.

[27] And it would be my recollection—you question was the number of people that had access to the information?

Q Yes.

A Perhaps there was somewheres between 6 and 10 in the initial discussions. And that is my best recollection.

Q And that was represented to you and Director Hoover as the full list of people who had access to the information?

A I do not know what was represented to Director Hoover because I may not have been at a meeting with Director Hoover on the subject.

Q I stand corrected. That was represented to you as the full list.

A That is correct.

Q What were—

A Excuse me, may I go back—you say full list. I have already testified to the fact that there were others discussed from time to time following these initial discussions.

Q But in this initial stage, I understood you to say, you talked about a lot of people who might have access and then narrowed it down to a smaller number of people who might have potential access.

A Not that I individually concluded, but the four who had knowledge concluded.

[28] Q Well, the group concluded.

A Well, it was not a group as a group. And the representations made to me were a number of roughly 6 to 10 that would be my best recollection.

Q What was the subject matter of the leaks in question?

A Well, in connection with what?

Q With these discussions.

(Pause)

THE WITNESS: Do I have to get permission from the Justice Department to answer that?

(Discussion off the record.)

THE WITNESS: Okay. Do you want to read back the question, or do you want to restate it?

MR. SLOCOMBE: (Resuming)

Q In essence, can you identify the leaks, the subject matter of the leaks where you were trying to identify who had access to the information which was leaked. What were the leaks about?

MR. HUNDLEY: Well, we would like to confine our answer to the subject matter, which is your question at this point. Go ahead and answer that question: the subject matter.

THE WITNESS: Well, the initial concern, of course, had to do with the United States policy and activities in [28] relationship to Southeast Asia, specifically with respect to the United States' policies and activities in the Cambodian matter.

There were also considered at this time and in the succeeding days and months other policies of the United States that were being formulated in a new Administration.

MR. SLOCOMBE: (Resuming)

Q By the Cambodian matter, do you mean the bombing of Cambodia?

A That is part of it, yes, sir.

Q When—these discussions took place, prior to the first request to you for an authorization for wiretapping?

A That is correct.

Q Did the names on this short list of potential, I want to be clear, this relatively limited list of six or eight names, was it people who were identified simply as potentially having access to the information which had been leaked? There was no further characterization of them, that they were the most likely people to have been leaks?

A Well, I am sure there were discussions on the subject matter of the likelihood and the desire to—

Q I understand that but I am trying to trace the procedure by which you narrowed down the list. If I understand it, you began with a relatively large list, a substantial number of [30] people who might have access. You then narrowed it down, if I understand your testimony, to six or eight people who the people knew informed you were the ones that did have access.

A That had access?

Q Right.

A Access does not mean that they were to go into the files and look at it, but it's also that they could get it from people who had access to files.

Q It was represented to you that there were only six or eight people in the United States Government who, on that definition of access, had access to information about the Cambodian—

A No it was not. And I have testified to the contrary. I will go back again and tell you with respect to the six or eight, that was the number that was selected for the purposes of the original surveillance, wiretapping, examination, questioning, whatever the matter was.

Q Then I have misunderstood your testimony and I apologize.

What was the basis—before we come to the question of how you narrowed it down—how many people did you understand had access in the sense which you described, without regard to motive or other reasons to believe that they might be [31] responsible for the leaking?

Did you reach an estimate of the number of people who had access to the information?

A There were wide and general discussions. But I can't tell you as to what number had access to it.

Q What were the criteria you used to narrow down from the broader class of people who had access to the information the six or eight whom you identified as the people to be subject to investigative procedures?

A Let me again say that this was not an elimination contest to say it had to be within this six or eight. It was a review of the circumstances to make a determination whether the six or eight were likely candidates, not excluding the possibility that there were others that had access to, that might have had desire, reason or motive, might be doing it. I don't want to leave that impression it was just cut off at the pass with just the original six, or whatever the discussions were involved with.

Q From what agencies did the people who had access come?

A Well, I remember distinctly the National Security Council Staff, the State Department and the Defense Department. There may have been other agencies. Possibly the Central Intelligence Agency, but I do not recall at this time whether they were so discussed.

[32] Q With respect to the Cambodian bombing, did they include the Air Staff?

A Well, that would be part of the Defense Department. If I understand your designation, that would be the Air Force.

Q The Washington headquarters within that Defense Department, rather than just within the office of the Secretary?

A That is correct.

Q You mentioned desire and motive as among the criteria which you used to narrow down this list. What did you mean by that?

A Well, I meant by that there were representations made as to the feelings of some of the individuals involved with respect to whether they approved or disapproved of the Administration's foreign policy and it's policy in the Vietnam theatre.

Q And I take it that the people who were believed to disapprove of the policy were regarded as, if I have your phrase correctly, potential candidates for investigation.

A I think that is a fair statement. Yes, sir.

Q How was it determined that they disagreed with the policies of the administration?

A I believe that the representations were made either by Henry Kissinger or the President.

Q And, did they convey to you any of the reasons, any [33] of the evidence which had lead them to those conclusions?

A I am sure that they probably did, yes.

Q Can you recall any of the substance?

A I cannot recall any of the substance of it at this late date.

Q Do you remember wheather any of the characterization of these six or eight as people who disapproved of the Administration's foreign policy came from Mr. Hoover?

A I do not. I do not believe that the discussion I had with Director Hoover got into this area.

Q Did any of these conclusions come from you personally?

A They did not.

Q Will you identify to the best of your present recollection who those six or eight people were?

MR. HUNDLEY: I think I would object to that. At this point the question would be confined pretty much to Dr. Halperin. I don't see any relevancy to identifying—

MR. CHRISTENBURY: The Federal defendants would join in that objection. I think Mr. Mitchell has responded fully as to the criteria and many of the bases which they considered. I think these are the facts that are relevant to this litigation. As to the identity of specific individuals that may or may not have been included, I simply do not believe is relevant.

[34] MR. SLOCOMBE: Well, Mr. Hundley and Mr. Christenbury, as you know, it is our position that one of the fundamental issues in the case is why Dr. Halperin was selected. And it seems to us highly relevant to that question who else was in the class that he was put in. And that the validity of that class and how that class was assembled, as well as how he was included in it, and what happened to the other people who were in that group is critically relevant to the legal status of the choice that was made to put a wiretap on his home telephone. And for that reason, we press the question.

(Pause)

MR. HUNDLEY: Excuse me, I have just conferred with my client, and we will answer the question. I'm sorry.

THE WITNESS: The answer is I do not recall.

(General laughter)

BY MR. SLOCOMBE: (Resuming)

Q Do you remember whether Dr. Halperin was one of the—

A Yes, I do.

Q Can you help me as to whether you remember that with the subsequent controversy about his tap or whether you have an independant recollection, whether it is something that you have had on your mind going back to 1969.

A My present recollection is that I had an independant [35] knowledge of it that goes back to 1969, but, as you are well aware, you hear so many of these things. But that is my present recollection, that I did have a direct recollection from the discussion at that time.

Q Can you recall whether Daniel Davidson was one of the names.

A I do not.

Q Colonel Pursley?

A Colonel, it's Piersley, isn't it?

Q Well it's spelled Pursley.

A Well, isn't he a General? Wasn't he Mel Laird's Secretary or Chief of Staff or whatever? Well, I think—I guess we are talking about the same fellow.

Q Yes.

A His name was discussed at some time in this time frame but I can't say that it was in the initiation of these discussions with respect to indivduals. It may have been at a later date. How much later I can't tell you.

Q Alexander Haig.

A I doubt it. I shouldn't say I doubt it. I have no recollection of Haig being discussed in this context.

Q Do you know for a fact whether, it was I believe, then Colonel Haig had access to the information in question.

[36] A Well, I know that Colonel Haig was Henry Kissinger's Deputy, I guess that was his title, on the National Security Council. And from my dealings with the National Security Council, I know that Colonel Haig had access to a great deal of information, documents and files. And I presumed, I would presume now that I knew then that he was, yes.

Q Hal Sonnenfeld? Helmut Sonnenfeld.

A I know Hall Sonnenfeld. I don't recall.

Q You don't recall whether he was one of the names?

A No, I don't recall whether he was one of the names.

(Pause)

Q The Cambodia bombing story which appeared in the New York Times, which Dr. Kissinger phoned Director Hoover about, appeared in the Times on Friday, May 9th. The various records of this period indicate that President Nixon and Dr. Kissinger were in Key Biscayne at that time, on that date.

Do you recall whether any of these conversations were at Key Biscayne or by telephone to Key Biscayne?

A I will tell you that I was at Key Biscayne during this period of time. My records show a meeting with the President and the Vice President and other people such as Rogers Morton and Harry Dent and Bryce Harlow. And my distinct recollection of them is it had to do with political affairs. And I recall [37] nothing that transpired at Key Biscayne on the weekend of May 9th and 10th that had anything to do with this, other than the fact that Mort Halperin says he met me down there.

Q The majority of the six or eight, were they NSC—well, let me ask it differently.

Did the six or eight, well, I guess I have not asked explicity, did it include Dr. Halperin?

A Yes.

Q In addition to Dr. Halperin, did it include other members of the NSC staff?

A It is my recollection that it did.

Q Did it include other persons who worked for the Department of Defense, including the Air Staff?

A I have no specific recollection.

Q You don't, for example, recall whether it included any Air Force officers who would have had operational contact with these reports.

A I do not recall any.

Q Do you recall whether it included any journalists?

A To the best of my recollection, it did not.

Q Anyone from the State Department?

A I know that there were people at the State Department, but whether they were included in this refined list or not, I [38] do not recall.

Q Who was aware of this refined list? The four people whom you've identified?

A To my knowledge, it would just be the President, Dr. Kissinger and myself.

Q Was that list ever reduced to writing?

A Not to my knowledge.

Q Did you have any conversation while you were at Key Biscayne concerning the—while you were at Key Biscayne, on that Friday, concerning the initiation of a wiretap on Dr. Halperin's home telephone?

A I have no recollection of any time while I was at Key Biscayne discussing the subject matter with anyone.

Q Excuse me, I want to go back just a second. As a result of these discussions, did the President give explicit instructions that a wiretap was to be placed on the home telephone of Morton Halperin?

A To the best of my recollection, no. Not in the specific terms of the individual.

Q Did he give such instructions with respect to the wiretap on any other individual in this period of time?

A Not as to a specific individual, to my recollection.

Q Did he give an instruction that a wiretap was to be [39] placed on the home telephones of the entire restricted group of six or eight?

A Not in the specifics of giving such a direction with respect to specific names.

Q I would now like to call your attention to a document dated May 12th, 1969, which we have in two versions; one of which will be Plaintiffs' Exhibit 1-A and 1-B. 1-A is the version which has been supplied to us in the case through discovery, with Dr. Halperin's name included, that with all of the information about other individuals taken out. And the second is the House Judiciary Committee's version of the same document, in which we have inserted in handwriting, they have initials, we have inserted in handwriting what we believe to be the names of the other persons which includes the information about the other individuals as well.

Have you seen these documents before, the originals?

A The originals?

Q Are you familiar with the document of which this is a copy?

A I am familiar—well let's back up. Am I familiar with the original of which one of these is a copy? Is that what your question is?

Q These documents, the two Xeroxes which I have handed [40] you—

A Uh-huh.

Q Both purport to be copies of the same document. They have different deletions.

A But your question was—

Q The question is are you familiar with the original of which these documents are a copy?

A I have no independent recollection of the original of the documents, of which these are copies.

I have seen, I believe it was this (Indicating) a copy of this same photostat, this same being the—you identify it as Exhibit A?

Q 1-A.

A And can add to it that to the best of my knowledge and belief this is a copy of my signature on this document.

Q By a copy of your signature, you mean it looks like it is a picture of an original of your signature, not somebody has copied your signature?

A I think that's right. I was referring to the document as a copy. The signature, I guess, is written.

MR. SLOCOMBE: For the record, 1-A is a memorandum for the Attorney General, dated May 12th 1969, with all but two paragraphs deleted on the first page and 1-B is the same memorandum [41] from the House Judiciary Committee evidence with the page number 192 at the bottom.

(The material referred to was marked Plaintiffs' Exhibits 1-A and 1-B for identification.)

BY MR. SLOCOMBE: (Resuming)

Q Do you have any recollection of the events on May 12th 1969 when this document was apparently signed?

A I do not.

Q Do you recall any discussion with Mr. Hoover with respect to this request for wiretaps?

A For wiretaps, yes, as I have previously testified. I had discussions.

Q For these specific four wiretaps?

A I have no independent recollection of these four or of the particular document discussions with Mr. Hoover.

Q Do you know whether, did you keep a telephone log of all of your telephone calls?

A Does that document still exist as far as you know?

Q Have you consulted that to know whether you had any telephone conversation with Mr. Hoover on May 12th of 1969?

A I have examined the log and it does not show any telephone calls with Mr. Hoover, nor does it show any individual [42] meeting.

[43] Q Does it include in that any telephone calls with any other senior FBI official?

Does it include in that specifically Mr. Sullivan, Mr. Tolson, and Mr. DeLoach?

A I would believe not. I have never talked with Mr. Tolson in my life. I did not deal with Mr. Sullivan. Whether it covers DeLoach or not I can't say. I'm inclined to say I believe it did not because I went through the log and took out these names and so forth; and I believe that I would have put DeLoach in there if I had had a conversation with him, because practically the only two people at the FBI that I talked to were Hoover and DeLoach.

Q Were you aware that in fact a wiretap had already been instituted on May 9 on Halperin's home telephone when this document reached you?

A I have no recollection of such knowledge.

Q Would it have been—I take it it would have been a substantial departure of usual procedures for a tap to have been on for three days when the authorization reached you?

A I think that would have been most unusual.

As far as I know, I do not recall any circumstances where that would have taken place.

Q You have now read Exhibit 1-B, which is the fuller [44] version of the two.

A Well, I've skipped through it.

Q How does that compare in terms of the discussion of the reasons for instituting—and I call your attention particularly to the paragraph which in the 1-B version begins, "N", which is the code for Dr. Halperin.

How does the description in that paragraph compare with the information that you customarily receive before approving a wiretap on an individual in connection with a regular national security wiretap procedure which you've described?

A It's somewhat briefer. But I go back to my prior testimony and state that it would depend on the substance of

the documents submitted to me as to what prior oral conversations had taken place on the subject matter.

Q I call your attention to the second sentence in the first paragraph which reads, "He," referring to Colonel Haig, "stressed that it is so sensitive it demands handling on a need-to-know basis, with no record maintained."

What did you understand by the phrase that there would be no record maintaned?

A That it would not be put into the customary files of the FBI.

[45] Q And how about in your office file, the file which you described as being in the anteroom of your own office?

A You mean, did this refer to it, refer to my files?

Q Well, I assume that the FBI doesn't have control over your files.

A That's correct.

I have no recollection of ever taking cognizance of this phrase in here.

Q Did you, as far as you know, cause the usual records to be made for your file with respect to these four wiretaps?

A I have no recollection one way or the other.

Q Do you have any knowledge of whether the files to which You refer still exist?

A I do not know specifically whether they still exist or not. Whatever the files were, were left in the Justice Department when I left.

Q So, as far as you know, if an examination of those files shows other national security wiretaps instituted in early 1969 are recorded in the normal way and there is no record of those wiretaps, no record was made at the time?

A Now I don't know that I can affirm or deny that.

I don't know who might have had access to them, or who might have removed them or otherwise. I just can't help [46] you, that's all.

Q Did you cause—who would have actually done the paperwork of creating that file in the normal course?

A During this period of time, Mrs. Susan Morrison—

I take that back. Oh, excuse me.

Let's see. This would be May of '69. I believe it would have been not Susan Morrison but Mrs. McKay; isn't that what Ramsey's secretary's name was?

MR. HUNDLEY: McHale.

THE WITNESS: McHale.

BY MR. SLOCOMBE: (Resuming)

Q And would you describe to your knowledge what she normally did?

A What paperwork did she create to indicate that the wiretap was in place?

A Whatever papers normally came into the office.

Q So, she would make a copy and put it in the file?

A Either that, or there would be copies attached.

Q There would be copies attached?

A Yeah.

Q You don't have any recollection of how this document reached you since you say you have no recollection of it at all?

[47] A I do not have a recollection of this specific document.

Q Normally, when a sensitive document is being delivered to you from the FBI, how would that be handled?

Who would bring it?

A I'm not certain I can answer that because I don't know. It was a long ways from that inner office out to that outer office.

Q But, for example, Mr. DeLoach, or Mr. Sullivan wouldn't come to you from time to time with sensitive documents and say I have a document, Mr. Attorney General?

A It might have happened once, twice, or three times the whole time I was there; but it had nothing to do with wiretaps.

Q When you would receive a document like this, did you feel that you had to make an independent decision taking into account the information that was available to you both in the document and from other conversations—that you had to make an independent decision on whether to approve the wiretaps?

A In some cases, yes, as I've previously testified, and in some cases no.

Q And if I remember correctly, the exception was when [48] the President had instructed you to approve a wiretap?

A That's correct.

Q With respect to this specific wiretap, did you understand that the President had instructed you to approve this wiretap?

A Yes.

Q Why did you reach this conclusion?

A Based on the conversations I had had with the President prior to the time it was submitted to me.

Q Even though, if I recall your testimony correctly, the President had not instructed that any particular individual was to be wiretapped?

A My testimony was, as I recall, that the President did not state that a wiretap was to go on Y's telephone.

Q But when you got a request to put a wiretap on Y's telephone, did you feel bound by the President's decision to put the tap on?

A I did.

Q And what I'm trying to get at is it's one thing if the President says I want done whatever is necessary to find out about these leaks, and even if he says he wants wiretaps used where appropriate, and another thing, if he says put a wiretap on Halperin.

[49] A So we don't waste all afternoon, I'll answer the right question for you, okay?

Q Okay.

A The taps were to be put on the individuals who had been discussed as transmitted to the FBI by Dr. Kissinger or his staff. That was the answer.

Q That is, your instructions from the President as you understood them was that Dr. Kissinger would provide names or a member of his staff would provide names for the FBI, and that when you received such a name you are under instructions from the President to put on such a tap?

A That is correct.

(Pause.)

Q Did you from time to time receive notifications of—well, just to get the record clear, I take it from time to time you received additional similar requests for wiretaps in the same series?

A That is correct.

Q Did you from time to time receive notifications that those wiretaps had been discontinued?

A My recollection is yes.

Q Did you ever have any discussion with Mr. Hoover or other senior FBI officials with regard to the usefulness of the [50] taps which were still being continued?

A To my recollection I had no such discussions.

Q Is your answer limited to FBI officials, or no such discussions with anybody?

A I have no recollection of having such discussions with anybody.

Q In your discussion with the President and Mr. Hoover and Dr. Kissinger in April and May of 1969 when this program began, was there any discussion that these taps were to be exempt from the usual renewal procedure?

A I recall no such discussion.

Q Was it your understanding—what was your understanding about how long the taps were to remain on once approved?

A I don't think I'd ever considered the subject matter.

Q Was it your view that they had to remain on until Dr. Kissinger or someone on his staff instructed they be taken off?

A I have no view of it, and I don't think I ever considered it.

Q So, I take it, that in fact, no 90 day renewal requests were ever made to you with respect to Dr. Halperin's tap?

A To my knowledge, there were not.

(Pause.)

[51] MR. SLOCOMBE: Just a moment.

Maybe we can cut some of this short. (Discussion off the record.)

BY MR. SLOCOMBE: (Resuming)

Q Mr. Mitchell, did you from time to time receive in connection with this program reports?

Well, did you have any understanding as to how the fruits of this wiretap were to be conveyed to the White House?

A How they were to be conveyed?

Q That's right, to Dr. Kissinger and the President.

A How?

You mean by messenger, or form, or content, or what?

Q Well, was it your understanding that summaries would be prepared from time to time and sent forward by letter from Director Hoover, or would someone come and read them? Were the logs to be sent over?

How were the people at the White House to find out what was happening with the taps, if you know?

A I have no independent recollection other than the fact that the information was to be made available to Dr. Kissinger in his office.

Q In Dr. Kissinger's office?

A Dr. Kissinger and his office.

[52] Q. I'm sorry.

Did you, from time to time, receive reports from Director Hoover of the content of the overheard conversations?

A I have no independent recollection of it. But, since this matter has started, I have reviewed some of the exhibits or documents in here, and I have noticed that there were summaries forwarded to me on two or three occasions, I'm not sure which.

(Pause.)

Q Was there any discussion in connection with the understanding that the information provided to Dr. Kissinger and his office, as to what Dr. Kissinger would do with the information once he received it?

A I have no recollection of any such understanding.

Q Was it contemplated that he would take action against the people whom he decided were responsible for the leaks, if he were to decide that anybody was responsible for the leaks as a result of these wiretaps?

A If I can answer your question in this way, I do have a recollection of the President saying that if it was established as to who was providing this information constituting the leaks, that they would be summarily removed from their positions in the government.

[53] Does that respond to your question?

Q That's the only understanding you have of how the information would be used?

A That's correct.

Q Was there any discussion that they would be prosecuted?

A To my recollection the matter was not discussed.

Q I'd like to show you a cover, what appear to be a cover memorandum, a carbon of a cover memorandum from Director Hoover, which will be Plaintiffs' Exhibit 2.

(The document referred to was marked Plaintiffs' Exhibit No. 2 for identification.)

BY MR. SLOCOMBE: (Resuming)

Q And that's dated August 6, 1969.

Do you recall receiving that memorandum?

A I do not.

I might add that if the Attorney General read everything that he got by way of information that came in to his office, he could go for 24 hours a day. It would take all of his time.

Q This is—we have not been given a copy of the attachment. We have been given a copy of the letter to the President and Dr. Kissinger, which is referred to in the parenthesis at the bottom of the memorandum, and this [54] will be Plaintiffs' Exhibit 3. Is the part of that letter to the President which relates to Dr. Halperin—it begins—one page is deleted. Page 1 to 9 is deleted, and the first page with text on it is page 10, which begins, "Morton H. Halperin. During a conversation with an unidentified woman, Dr. Halperin's wife, said . . ." To clarify the record, this is not actually the letter to the President. This is an excerpt from a memorandum which was attached to the letter to the President, which appears to be the same letter that was attached to the memorandum to you.

Do you recall ever seeing that before, except perhaps in preparation for this deposition?

A No, I do not.

Q Do you have any idea why this information would not have been sent to you?

A No, I do not.

(The document referred to was marked Plaintiffs' Exhibit No. 3 for identification.)

BY MR. SLOCOMBE: (Resuming)

Q You have no recollection of receiving this?

A I have no recollection of receiving this.

Q Who would have read material of this character [55] before it reached you and perhaps to decide whether it should be given to you actually to read?

Who screened information for you?

A My secretary.

Q Who was it this time in August of '69?

A It would either be Mrs. McHale or Mrs. Morrison. I'm not quite sure when the switch took place.

Q And do you know what your secretary did with information which she decided, although addressed to you, you ought not to be bothered with, ought to go to somebody else?

A It would depend entirely upon the classification of it. Do we know whether this is classified or not?

Q My belief is that the deletions at the top and bottom are deletions of some security classification, probably Top Secret.

A Well, if it were so classified, it would go into that safe in the Attorney General's anteroom.

Q And you never caused any documents to be removed from that safe?

A I did not.

Excuse me. Excuse me.

Let me correct that.

When I left office, that safe, which was about five [56] tiers high (Indicating) contained a great deal of material from the National Security Council and I believe the Central Intelligence Agency not relating to these materials, but to other materials; and I had people from the National Security Council and from the Central Intelligence Agency come down and check that back out. The Department materials were left there; but talking about materials related to my function on the National Security Council and other agencies of government—

Q Do you know who the person on the National Security Council who performed that function was?

A I believe it was General Haig.

If it was not General Haig, I do not know who it was.

Q In connection with this function of taking out documents relating to your functions on the National Security Council, would General Haig have had access to all of the drawers?

Is this a drawer safe?

A It's a drawer safe.

Q He would have had access to all of the drawers?

A I do not believe that he would have, because it's my recollection that my secretary at the time was with the individual. The materials relating to the Department of Justice matters, such as wiretap investigations, the other matters, were below that; [57] and I believe he had access only to the lower drawers.

Q But the drawers would have been unlocked at the time they were doing it?

A I am not certain. It was such a complicated instrument put in by the CIA that I can't tell you how it operated.

Q Did you ever give any instructions for physical surveillance on Morton Halperin?

A No.

Q Was your approval normally required for a physical surveillance?

A No.

Q Did you ever give any instructions for a physical surveillance on Henry Brandon?

A. Off the record.

(Discussion off the record.)

THE WITNESS: No, I didn't.

BY MR. SLOCOMBE: (Resuming)

Q Do you know whether any such surveillance was ever instituted on Morton Halperin?

A No, I do not.

Q On Henry Brandon?

A I do not.

[58] Excuse me. Other than the fact that I saw some pictures in your—

Q Yeah. We all are aware of those.

I'd like to show you a memorandum from Director Hoover to the Attorney General dated September 15, 1969, which will be Plaintiffs' Exhibit 4.

(The document referred to was marked Plaintiffs' Exhibit No. 4 for identification.)

BY MR. SLOCOMBE: (Resuming)

Q It begins, "Reference is made to prior correspondence." Do you remember receiving this document?

A I do not.

Q The second paragraph says, does it not, "According to Colonel Alexander Haig, Dr. Kissinger has now advised that he desires all such surveillances installed at his request discontinued except the ones with reference to Morton Halperin and " name deleted. "Accordingly the surveillance on," apparently two names, "are being discontinued today."

Does the description in that paragraph of who controlled the continuance of these wiretaps correspond to your understanding at the time—that is, that it was up to Dr. Kissinger to decide when the wiretaps came off?

[59] A I think I would have to answer the question the way you put it yes.

Dr. Kissinger, having initiated the taps, that it would be his determination as to when they came off. Yes.

Q You do not recall any discussion with Dr. Kissinger or Mr. Hoover concerning the Halperin and the other tap?

A I do not.

Q Did the receipt from time to time of these discontinuation memos cause you to have any thoughts with respect to the regular 90 day requirement in normal national security taps?

A I can't recall whether I ever received them.

I have no recollection of ever considering the matter in the way you put it.

(Pause.)

Q Now, I show you a memorandum dated December 29, 1969, from Mr. Sullivan of the FBI to Mr. DeLoach, which forwards certain letters to the President to be signed, to be sent to the President; and bears a handwritten notation which Mr. DeLoach has identified as his handwriting. It says, "Suggest AG also be advised."

Do you have any idea why—well, just to make the documentation complete, a memorandum from the Director of the FBI to the Attorney General dated December 29, 1969, and this again [60] is a carbon which will be Plaintiffs' Exhibit—the memorandum from Sullivan to DeLoach—will be 5, and the memorandum from Hoover to the Attorney General will be 6.

(The documents referred to were marked Plaintiffs' Exhibits No. 5 and 6 for identification.)

BY MR. SLOCOMBE: (Resuming)

Q There are two, the one that has Attorney General at the top is 6, and the one that has DeLoach at the top is 5.

After you have had a chance to look at them, could you tell me whether you recall receiving them?

A No, I do not.

Q Do you have any idea why Mr. DeLoach would have suggested this material be transmitted to you?

A No, I cannot help you with Mr. DeLoach's mental processes.

Q Did you ever have any conversation with Mr. DeLoach about him sending you material which he thought you might be interested in?

A Sending him?

Q His recommending to Mr. Hoover sending material he thought you might be interested in?

A I recall no such conversations.

[61] Q Do you recall any conversations with Mr. DeLoach about this program?

A I do not recall any; but I certainly cannot exclude them, except insofar as I have previously testified that my records covering this conversation do not show any telephone calls with Mr. DeLoach.

Q Now, this was in December of 1969.

A I am not certain.

Q Does your survey go that far?

A No.

You're probably correct.

I did not check into that area.

My survey went from April through the end of May.

Q I'd like to ask you a question about the content of the December 29, 1969 memorandum?

A To?

Q To you?

A Yes, sir.

Q Do you consider this information which relates to leaks from the National Security Council?

Perhaps for the record you could just briefly summarize what the memorandum is all about.

MR. CHRISTENBURY: Mr. Slocombe, I'm not sure I [62] understand the relevancy at this point.

Mr. Mitchell has testified he never saw this document therefore he never made any assessment at the time.

What you're asking, in effect, is some six years later, without benefit of all the facts which may or may not have surrounded this document, for Mr. Mitchell to draw a conclusion some five years removed.

I'm not sure that's either fair or appropriate to the witness in this regard.

THE WITNESS: Well, now you'll ruin my chances for a fee as an expert witness.

(General laughter.)

MR. SLOCOMBE: Was that just an observation?

MR. CHRISTENBURY: Well, I would interpose an objection.

Of course, we cannot instruct the witness not to answer, but we would interpose an objection as to the way the question is framed.

MR. HUNDLEY: Wait till we assess it.

(Pause)

THE WITNESS: What was the question.

BY MR. SLOCOMBE: (Resuming)

Q The question is whether your assessment of that document is that it relates to leaks from the National Security [63] Council?

A I don't believe, based on a reading of this document at this time that I have enough information to make that assessment.

Q Do you know who Clark Clifford is?

A Having played golf with him, I think I do.

Q Was it a concern of the Administration at this time to be aware of criticisms of the Vietnam policy of the Administration?

A It wasn't a concern of mine as a member of the Administration. Whether it was a concern of other parts of the Administration, I think you'll have to ask them.

Q Who would you suggest we ask—and I mean that quite seriously?

Who would the people who in your judgment who were responsible for answer criticisms of the Vietnam policy?

A Those who were conducting the foreign policy.

Q Which would be?

A The President; Dr. Kissinger; the Secretary of State; the Secretary of Defense.

Q Was it your understanding that Mr. Haldeman had any responsibilities in that area?

A I've never known Mr. Haldeman to have any [64] responsibilities in any area that had anything to do with substance.

Q Mr. Ehrlichman?

A Mr. Ehrlichman did not have anything to do with any areas that had anything to do with foreign policy.

Q Did Mr. Haldeman have anything to do with matters dealing with domestic politics?

A Yes.

Q And Mr. Ehrlichman?

A Not during this period of time. No, other than domestic matters were concerned that might affect politics.

Q You never had any discussion, I take it, with Mr. Haldeman or Mr. Ehrlichman or anybody on their staff about responding to Mr. Clifford's criticism about White House plans to make a response to this?

A. I have no recollection of it, no.

Q The next document is May 4, 1970, which is another, I think we're up to 7.

This is Plaintiffs' Exhibit 7, which is another carbon of a memorandum from the Director of the FBI to you.

(The document referred to was marked Plaintiffs' Exhibit No. 7 for identification.)

[65] (Pause.)

BY MR. SLOCOMBE: (Resuming)

Q Do you have any recollection of receiving this document?

A I do not.

Q At the time of the Cambodian invasion, did you participate in any discussion concerning leaks from the government?

(Pause.)

A I don't recall any.

I have no recollection.

Q Do you have any idea why this document would have been sent to you?

A No, I do not.

Was it sent by Hoover?

Q Yeah.

A Other than the fact that my name was mentioned.

Q Do you regard the collection of this kind of information as consistent with your understanding of your understanding of the original purpose of the wiretap?

A I would have to give you the same answer I did to a similar question before, that without a more detailed study of this, and without more information concerning some of the contents, I cannot answer that.

(Pause.)

[66] Q Did you participate in any discussion of the change in the procedure which took place at around this period of time—apparently around May 12, 1970—of a change in the procedure for delivering the summary letter, so that instead of going to the President and Dr. Kissinger, they would go to Mr. Haldeman?

A To my recollection, I did not.

Q Were you aware of that change being made?

A To my recollection, I was not.

Q Our information indicates that this one in May was the last of the summaries to have been sent to you.

I take it you have no recollection of receiving one subsequent to the Cambodian invasion?

A I have no recollection of receiving these; so I have no recollection of receiving ones subsequent to the Cambodian invasion. No.

Q Okay.

Did you have a conversation with Dr. Kissinger or General Haig in which you or they referred to these wiretaps as a dangerous game?

A I do not recall such a conversation in that context. In fact, it was quite to the contrary.

(Pause.)

[67] Q Do you recall being interviewed about this matter by two FBI special agents in May of 1973?

A I recall being interviewed by a couple of them in '73. I'm not sure whether it was May or not.

Q Their report of your conversation says, "To the best of Mitchell's recollection he did sometime thereafter discuss these wiretaps with either Colonel Haig or Dr. Kissinger at the White House, and they—Mitchell and Haig and/or Kissinger—agreed that these wiretaps could become 'explosive' and that this whole operation was a dangerous game we were playing."

"Mitchell stated, however, that to the best of his recollection, nothing was done as a result of his informal discussions mentioned above at the White House."

Does that refresh your recollection—not as to what you said to the FBI agents, but as to whether the event took place?

A I would like to look at that.

Q I would be glad to let you look at that for verification.

A I have read that interview recently, and the interview has two infirmities. Number one is that our conversations were not accurately reported; and number two, with regard to some of the other substance of what you're talking about, this is subject matter that they asked me about fresh off the top of their heads and my head some four or five years after the event. So, my recollection was not refreshed.

Now, to get back to your specific question, I do not [68] recall having such a conversation with Haig or Kissinger on the subject to which you make reference, of the "dangerous games".

Q Do you recall saying it to the FBI agents?

A No, I do not.

Q On February 11, 1971, you received or a memorandum was addressed to you, which will be Plaintiffs' Exhibit 8, which says in effect that the wiretap had been discontinued.

(The document referred to was marked Plaintiff's Exhibit No. 8 for identification.)

THE WITNESS: Is that a question?

BY MR. SLOCOMBE: (Resuming)

Q Do you recall receiving that memorandum?

A I do not.

Q Did you have any discussion with anyone about this final termination of these taps?

A Not to my recollection, I did not. And, if I could supplement my former answer, this is the type of thing the secretary would just take and file and probably never call to my attention because it was terminated.

Q Do you know whether Mr. Hoover had a practice of terminating all the wiretaps he could terminate just before he [69] was to testify on the FBI appropriations so he could report a reduced number of surveillances in effect?

A I have no specific knowledge on the subject matter. I have heard rumors to that effect. Whether they are valid or not, I wouldn't know.

Q In June and July of 1971, did you participate in the investigation and the monitoring of the investigation of the publication of the so-called Pentagon Papers.

A Investigation and monitoring of the publication of the Pentagon Papers?

MR. HUNDLEY: We don't quite understand that.

MR. SLOCOMBE: Well, if it's the monitoring that's bothering you, that I will be glad to rephrase.

Shall we take a short break, now?

MR. HUNDLEY: Yeah. I'd like to ask him about this.

(A brief recess was taken.)

BY MR. SLOCOMBE: (Resuming)

Q I think the pending question is whether as Attorney General you participated in any way in the investigation of the Pentagon Papers case?

A Well, not in the investigation; but the consideration of it, yes.

Q That's what I was trying to get at by monitoring the [70] investigation.

Did the name Morton Halperin come up in any connection with your consideration of that case?

A I have no recollection of it, no.

Q Was there any discussion of the possibility that Dan Ellsberg had not acted entirely alone?

A Yes, I'm sure there was. But—

Q Can you recall the names of any individuals who it was thought might have been involved with him?

MR. HUNDLEY: Well, I'm going to object, unless the question is whether or not there was any discussion of whether or not he acted with the Plaintiff in this lawsuit; because otherwise we're going to get into an area, and God, we'll be here—

MR. SLOCOMBE: I'll accept that.

BY MR. SLOCOMBE: (Resuming)

Q Was there any discussion in any way of a possible role of Dr. Halperin, either consciously or unconsciously, in the publication of the Pentagon Papers?

A Not to the recollection I have of those discussions.

Q I'd like to show you a memorandum dated June 15, 1971, which says Re Morton Halperin, and this is Plaintiffs' 9; and though it says it's continued on the second page, [71] this is the only one we've ever found—and ask you whether you have ever seen this memorandum?

(The document referred to was marked Plaintiffs' Exhibit No. 9 for identification.)

THE WITNESS: I have no recollection of ever having seen this document.

BY MR. SLOCOME: (Resuming)

Q From its format, are you able to suggest who might have prepared it?

A No, I am not.

Q Mr. Ehrlichman in making notes of conversations in which he, Mr. Haldeman, and the President participated about the Ellsberg case and the Pentagon Papers affair generally made a note which reads, "Re Grand Jury, don't worry Re Taps on discovery Re White House."

Does that mean anything to you?

A Would you read that more slowly?

Q Yeah.

I'll give you a copy.

This will be Plaintiffs' 10.

A And what would the page before it be?

Q Well, the page before indicates that it would be a [72] conversation that took place on July 10, 1971, and this is page 141 of a House Judiciary Committee document.)

(The document referred to was marked Plaintiffs' Exhibit No. 10 for identification.)

MR. BRESS: What book number, do you know?

DR. HALPERIN: Seven.

MR. BRESS: Seven?

THE WITNESS: Have you figured out what that last WTTS is?

BY MR. SLOCOMBE: (Resuming)

Q Well, it could be WTTS, but I think it's WHS or it could be WTTO.

DR. HALPERIN: Well, it's wiretapping.

BY MR. SLOCOMBE: (Resuming)

Q Well, it could be wiretapping. We'll be taking Mr. Ehrlichman's deposition shortly, and he may be an expert on his own handwriting.

A And your question was?

Q Does it convey anything to you about the relationship between wiretaps and the Pentagon Papers investigation?

A Nothing whatsoever.

Q Was there any discussion to your knowledge of the [73] problems that might be posed if subjects of these wiretaps, people who were overheard on their telephone, were summoned before a Grand Jury?

A I recall no such discussion at the time of the Ellsberg matter or at any other time.

Q Do you recall whether there was any discussion of whether or not, in fact, Ellsberg had been overheard on any of these wiretaps?

A I do not recall any such discussion.

Q I'd like to turn now to the removal of these documents, the FBI's set of these documents, from the FBI.

Do you recall any conversation with Mr. Mardian concerning the disposition of these documents? By these documents I mean the FBI's files relating to these wiretaps?

A I recall Bob Mardian telling me, and it was I believe—this is to the best of my recollection—after my return from Europe, that the documents had been transferred from the custody of, I assume it was Sullivan, to the White House.

Q Just to fix the time, when was the trip to Europe to which you referred?

A I left Washington, D.C. on the seventh of July, and returned on the 26th day of July.

Q So, it would have been in late July or early August [74] of 1971?

A That would be the best of my recollection.

Q Do you recall a telephone conversation with Mr. Hoover in October of 1971 about this matter?

A I recall discussing it with Mr. Hoover. I don't know whether it was a telephone conversation or a meeting I had with him.

Q To go back to the conversation with Mardian, did he tell you why Sullivan had wanted to remove the documents from the FBI files?

A Yes, he did.

Q Will you tell me the substance of that conversation?

A The substance of it was that he, Sullivan, who was then in a large hassle with Mr. Hoover—I'm not sure whether he had been fired by then or not—had advised Mardian that he, Sullivan, was concerned that Mr. Hoover would use his knowledge of these taps in an untoward manner in connection with the Administration. I can't be any more specific than that.

Q Did you share that concern?

A I had no concern about it one way or the other, which is evidenced by the fact that I never did anything about it.

Q And did Mr. Mardian indicate to you why he had taken the documents to the White House?

[75] A My recollection is that Mr. Mardian told me he took the documents to the White House to check the documents that the FBI had against the documents that were in the White House to see if they were all there and all corresponded.

Q To your knowledge, was any effort ever made by the FBI to retrieve from your office any documents such as, for example, the three memoranda which were sent to you relating to this?

A Not to my knowledge, no.

Q Did you ever give any orders to Mr. Mardian not to discuss his removal of the documents to anyone?

A I have no recollection of it.

Q He apparently told people in the FBI in October of 1971 that you gave such instructions.

A All I'm saying is I have no recollection of any such conversations.

Q Okay.

Do you recall any correspondence with Mr. Hoover with respect to this removal?

A No, I do not.

Q Did you ever tell Mr. Hoover, to go back to this conversation or exchange on the telephone or in person with

Mr. Hoover, about the removal of the documents?

[76] Will you state for us the jist of that conversation?

A To the best of my recollection it was that Mr. Hoover made enquiry concerning, not so much enquiry, but a statement about what had transpired between Sullivan and Mardian and asked me if I was aware of it; and I told him that I was. He asked me where the documents were, and I said to the best of my knowledge they were at the White House.

Q And by saying he made a statement of what had transpired, he made a statement that Sullivan had given them to Mardian?

A Yeah.

The Sullivan-Mardian transaction. He may have injected other names into it, but I have no recollection of it at this time.

Q Your recollection of it is that you did not say to Mr. Hoover that the documents had been destroyed?

A Absolutely not.

(Pause.)

Q To go back to the general procedure for national security wiretaps, did you form any conclusion as to the legality of the procedure which was employed for national security wiretaps?

A My answer would be that based on the prevailing practice [77] that had existed in the Justice Department for a long period of years and the language contained in the Safe Streets Act, I had formed the opinion that it was proper to proceed with the procedure as it existed in the Department.

[78] Q Did you cause any analyses to be made of the impact of recent decisions by the Supreme Court on past practices with respect to National Security Council wiretaps?

MR. CHRISTENBURY: Mr. Slocombe, just for my edification, if you can indicate what time period you're re-

ferring to, and what Supreme Court decision you have in mind?

MR. SLOCOMBE: I have in mind the time period of early 1969. And, specifically, the Alderman case and the Katz case.

THE WITNESS: Oh, yes.

BY MR. SLOCOMBE: (Resuming)

Q Did you cause any memorandum to be prepared, or do you know of any memorandum that was prepared concerning the impact of the Alderman case on the prior procedures of the Justice Department with respect to national security wiretaps?

A The only recollection I have is that I have no recollection with respect to memoranda, whether the Department at a lower level prepared them or not, I do not know.

I remember having discussion within the Department with the Solicitor's Office, and I believe the Criminal Division, on the subject matter. And I have a recollection the determination was the subject matters had not been covered by those cases in any manners that would affect the procedures [79] we were following with respect to national security taps.

Q You've referred a couple of times to the logs of your—I guess of meetings which you held, and telephone conversations?

A Yes. While I was in the Justice Department, there was a log kept of every meeting that I had, and every telephone call that was completed. And I think that it is as accurate as it can be, because of the fact there were so many girls out there in the Attorney General's office that when one was out the other one kept it.

Q Do you know who now has custody of those documents?

A Well, they go from '69 all the way through March of '72, and—do we have copy of those?

MR. HUNDLEY: The FBI has the originals.

THE WITNESS: The FBI has the originals of all of them? I don't think so. Not of all of them.

MR. HUNDLEY: Well—

THE WITNESS: Well, I think I may have some of them. Others are in the possession of the FBI.

MR. HUNDLEY: And the Special Prosecutor.

THE WITNESS: And the Special Prosecutor.

BY MR. SLOCOMBE: (Resuming)

Q Do you have a copy of the complete set?

[80] A I think so. I think so. There were an—but I'm not sure. There were an average of two for each year, so you're talking about seven or eight logs.

MR. HUNDLEY: Do you have '69?

THE WITNESS: I think so.

MR. HUNDLEY: Well, if we don't have a complete set, we can get it.

MR. SLOCOMBE: Well, without prejudice as to whether or not these were covered—and I think they were covered by a previous Rule 34 request—we would like access to those logs for the period of, let's say, April 15th to May 15th, 1969.

MR. HUNDLEY: All right, I'll make them available to you.

THE WITNESS: I think I have that volume up in New York, if I'm not mistaken. We'll get it down here as soon as we can.

MR. SLOCOMBE: And also for the period around the time of the Clifford letter. That would be, say, from December 25th, '69, to January 20th or so, 1970.

MR. HUNDLEY: All right.

THE WITNESS: April through May of '69; and June and July of '70?

MR. SLOCOMBE: No, late December '69, through, say, [81] January 20th of 1970.

BY MR. SLOCOMBE (Resuming)

Q I want to be sure I understand your answer with respect to the assessment of the Justice Department as to

the legality of national security wiretaps subsequent to the Supreme Court decisions in Alderman and Katz.

Were there to your knowledge memoranda prepared in the Department concerning the impact of the whole series of cases prior to, up to any including Alderman, both as to procedure any as to whether such taps remained legal?

A I have no recollection of whether or not there were memorandum prepared in the Department. I do have the recollection of the discussions we had, as I have testified to you previously.

MR. CHRISTENBURY: Excuse me, Mr. Slocombe, to help me in this matter—I can't recall the date of Katz. Was it—was it '67?

MR. SLOCOMBE: Yeah.

MR. CHRISTENBURY: So the record should reflect that the Katz decision came down before Mr. Mitchell became Attorney General.

MR. SLOCOMBE: The Alderman decision, if I recall, came down on the day you became Attorney General.

THE WITNESS: Well, it was close to it.

[82] BY MR. SLOCOMBE: (Resuming)

Q Was there any discussion in the Department of the legality of ordering these wiretaps, in general, in the light of these decisions?

A This is what I had reference to.

Q Well, I just want to be clear that it's national security taps, not national security taps without a warrant.

A Well, you're familiar with the fact that all national security taps from the Justice Department are warrantless. So when we are discussing the subject matter, they are one and the same.

MR. SLOCOMBE: That's all I have. Thank you.

MR. CHRISTENBURY: Could we take just a short break?

MR. SLOCOMBE: Sure.

(A brief recess was taken.)

EXAMINATION BY COUNSEL FOR FEDERAL DEFENDANTS

BY MR. CHRISTENBURY:

Q Mr. Mitchell, I just have a couple of brief questions.

As I recall, you described the meetings you had in late April and early May, that the purpose for which these surveillances were initiated was to try to determine the source or sources of leaks of classified information.

During those meetings, was there ever any discussion [83] or ever any suggestions that these surveillances were placed on for any other purpose? Particularly, to obtain political information with regard to the subjects?

A No, sir.

Q Mr. Mitchell, also in setting forth your understanding of your instructions from the President with regard to authorizing these electronic surveillances, as I recall you indicated that your instructions were those names which Dr. Kissinger's staff brought to you for surveillances to be authorized. This was your instructions from the President.

My question goes to this area. If, during your meetings in late April and early May, if Director Hoover had suggested a name of a person to be the subject of electronic surveillance and subsequently Dr. Kissinger's staff brought that name over to the FBI and it was subsequently brought to you, would you feel that you were under instructions from the President to authorize that surveillance, also?

A Well, I don't know how to answer this. It's a hypothetical question. Now I don't know whether the facts that you relate took place, to my knowledge. And, regardless of how the information got to Dr. Kissinger and what his assessment was, if it were an individual that Dr. Kissinger advised me of, and advised the Bureau, that would fall within my [84] understanding of the President's directions.

Q I see.

And, lastly, Mr. Mitchell, is it and was it your good faith believe that all of those actions were lawful?

A It was my personal and legal opinion that they were lawful and that legal opinion was butressed by the consultations I had had with the staff in the Justice Department.

MR. CHRISTENBURY: Thank you. I have no further questions.

MR. MC GIFFERT: No questions.

MR. BRESS: No questions.

MR. SLOCOMBE: I have, I think, about four questions.

FURTHER EXAMINATION BY COUNSEL FOR PLAINTIFFS

BY MR. SLOCOMBE:

Q If I understand your answer to Mr. Christenbury's long question, there was, in fact, no instance in which Mr. Hoover recommended a name to Dr. Kissinger and then Dr. Kissinger asked Hoover to put the tap on?

A That's correct.

Q Who on the staff of the Justice Department was it with whom you had these consultations?

A I testified here just a few minutes ago that it was either the Solicitor or representatives of his office; and [85] representatives of the Criminal Division.

Q The Solicitor General at that time was Dean Griswold?

A Dean Griswold.

Q All right, can you identify the individuals in the Criminal Division?

A No, I cannot. I had so many meetings on so many subjects with them that I cannot.

Q Did you give any instructions in connection with this wiretap of Dr. Halperin, or the set of wiretaps, to avoid the recording and interception of conversations relating to domestic party politics?

A I gave no such instructions.

Q Relating to dissent from the policies of the Administration?

A I gave no such instructions.

Q Relating to the private lives of the individuals concerned?

A I gave no such instructions. That was a standard practice on the part of the FBI, as I understood it.

Q What was a "standard practice"?

A To eliminate, in their overhearings, and their reports, any materials that had to do with people in their personal or private lives.

[86] Q Did you give any instructions that the conversations of third-parties who were using the telephone—for example, house guests—ought not to be intercepted?

A I recall none such.

Q Is it your judgment that the FBI, in fact, followed the policy that you described? That is, of eliminating from their reports information about the private lives of the people for who they were monitoring?

A That is my understanding, that they not only do that, but they also eliminate matters that they deem to be immaterial and I'm talking about in preparing their logs or memorandum that are used.

Q On what do you base that understanding?

A Discussions I've had over a period of years while I was in the Department.

Q With whom?

A People in the Criminal Division and the FBI.

Q Can you identify the individuals?

A Well, I'm sure Director Hoover would be one. Probably Deak DeLoach. People in the Criminal Division. It could be any one of them in the line of the chain of command when we were discussing these subjects of wiretapping.

Q Did you ever have occasion to review the logs of [87] FBI taps to see whether this policy was, in fact, being carried out?

A I never reviewed their logs, for that particular purpose. On the limited occasions when I would see the "logs" from the taps, I have never to my recollection seen anything in there that had anything else to do with other than the subject matter for which the tap had been put on.

Q So that your judgment would be that if, in fact, a log reflected information about strictly personal matters, that that was the FBI's understanding that they were supposed to collect the information in that particular case?

A Not necessarily. It might have been for that reason, or any other reason. I can't guestimate as to what the understanding of the FBI might be.

Q I'm puzzled—

A I'm puzzled by your question, and you're puzzled by my answer.

Q Well, the deposition we took from FBI officials who were in charge of the actual monitoring indicated the policy was different from what you indicated. And that's why I'm pursuing the question.

A Well I can only respond to that by saying that's not my understanding. I'm not only talking about this area—this [88] was not singled out for any special consideration. I'm talking about the general practice that I understood existed.

If I can supplement that answer, I want to make sure we understand that when we talk about logs, as I understand it, that is what is typed up and submitted to whoever is to receive that information.

I'm not saying what might not appear on the tapes, that they don't turn on or turn off.

Q I think we have the same understanding of the word "logs".

In your consideration of the legality of wiretaps, did you consider at any point that the legality of a tap might depend on the scope of what was intercepted? That is, whether an effort was made to restrict the conversations that were logged, to the extent that you've just described, to subjects relevant to the subject of inquiry?

A Are you talking in general, again?

Q Yes.

A Well there are regulations in the Department that cover this subject matter with respect to different kinds of taps.

Q Were there such regulations in effect for national security taps?

[89] A No, they did not apply to them, except—well, I'm not sure whether they did or didn't. I'm not quite certain. But you were talking about the general approach to them, and I'm saying that there were regulations that did limit the overhearings. I just didn't want to let that get by without that being understood.

Now, with respect to national security wiretaps, I'm not certain how they're affected by those regulations.

Q Well, apart from the fact of how they're affected by the FBI, or the Justice Department Regulations, you said you formed a personal and legal opinion, as Attorney General of the United States?

A That's correct.

Q Did you conclude that the legality of a national security wiretap depended to any extent on whether it was limited to information relevant to the inquiry for which it was instituted?

A Are you talking about the receipt of the information? Or the dissemination of the information?

Q Well, I would assume once you put a tap on, you can't avoid having at least one person hear everything that goes on on the line.

A Except in certain taps, when certain subject matters are discussed the tap is to be turned off under regulations [90] of the Department.

Now, with respect—excuse me. Go ahead.

Q Was it your conclusion that with respect to national security taps, the legality in any way turned on whether, for example, as you suggest, when certain types of subjects were discussed, or certain types of conversations,

the machines be turned off and the guy turn off his listening device?

A My opinion, as far as legality is concerned, is that it has nothing to do with respect to what is overheard.

Q And, with respect to the preparation of the logs, would you reach the same conclusions, that what was put in the logs had no impact on the legality of a conversation? The legality of the interception?

A I would believe it would have—it would be my opinion it would have no impact at all on the legality of the establishment of the overhearing, the wiretap, the electronic surveillance.

Q And would the continuation of a wiretap, without—would the legality of the wiretap in any way depend on how long it was continued?

A In my opinion, no.

Q That is, that the need for justification of a wiretap would not, so to speak, increase as it went on for longer and [91] longer?

A I don't think you could answer that as a blanket question. I think you would have to take each individual case, as I've testified to before.

Q Taking each individual—was it your understanding of the law that taking each individual case, a relevant question in assessing the continued legality of a wiretap was whether it was being productive?

A That is not the sole criterion, no.

Q But is it your understanding that it is a factor?

A It could be a factor, in some instances.

Q And would it be a factor in instances such as these?

A I can't answer that. I'd have to go back and review all of the logs and tapes and circumstances, to advise you. That's why I say that you cannot, as a blanket matter, answer that question.

Q Was the likelihood that information relevant to the purpose for which the wiretap had been instituted relevant to its legality? Was the chance that you would learn some-

thing which related to the stated reason for putting the tap on relevant to the legality of the wiretap?

A No.

Q So, if I understand it correctly, the sole basis for [92] the legality of the wiretap was a justification memorandum which supplemented by unrecorded, possibly unrecorded, oral conversations between you and other persons led you to sign the authorization and that provided you signed an authorization the wiretap was legal?

A No. I will review my testimony again for you.

The authorization is based upon the material contained in the authorization. That speaks for itself. The oral discussions that were had concerning the subject of the wiretap, all of the circumstances and surrounding matters that we have discussed that relate to it, plus a determination made in good faith by the people in authority that it was proper to place that tap on the individual involved for the purpose of protecting the national security of the United States.

Q Okay. Once that determination was made, did anything subsequent have to happen for the wiretap to continue to be legal?

A I think I've answered that question before and I'll answer it again. It would depend on the individual tap, the entity under the tap and all of the circumstances surrounding it, plus the product of the tap.

Q If it depended on the circumstances of the individual tap, would that not require some review of the circumstances [93] of that tap from time to time?

MR. HUNDLEY: Well—

THE WITNESS: I think that's a non sequitur, or at least I didn't understand your premise upon which that—

MR. SLOCOMBE: Let me rephrase the question.

BY MR. SLOCOMBE: (Resuming)

Q If I understand your testimony your judgment of whether it was proper to continue a tap would depend on the circumstances of the particular tap?

A And all of the other circumstances we've talked about in connection with the installation of the tap.

Q Yes, I understand that. Does that not imply the need for some procedure from time to time to review the circumstances of the particular tap?

A It depends entirely upon the nature of the tap and all of the other circumstances surrounding it. I testified before here earlier that as a matter of practice where there are certain entities under electronic surveillance that there's a determination that there's no need for an interim review of the product of the tap.

Q In your judgment, would that include retired government officials who were suspected at one time of leaking to individuals?

[94] A It would depend entirely upon the individual involved and all of the surrounding circumstances causing the tap to be placed, and also the product of the tap.

Q And regardless of whether any individualized review was made, the tap would continue to be legal indefinitely.

MR. HUNDLEY: Well, I object. We've been through this over and over again.

THE WITNESS: Well, if you want me to restate it, I will. But I don't accept your conclusion.

MR. SLOCOMBE: I have no further questions.

MR. CHRISTENBURY: Excuse me. I just have a couple of brief questions to clarify the record. Mr. Slocombe asked several questions in the negative and just to make sure the record is clear I would like to ask them in the affirmative.

FURTHER EXAMINATION BY COUNSEL FOR FEDERAL DEFENDANTS BY MR. CHRISTENBURY:

Q With respect to the surveillance of Dr. Halperin, did you ever instruct the Bureau to look for information regarding domestic politics?

A I did not.

Q With regard to the personal lives of the subjects of the surveillance?

A I did not.

Q Or any information regarding dissent from Administration's [95] procedures, apart from any connection to national security leaks?

A If we use that phrase "currently accepted," the answer is no.

Q And with regard to your earlier testimony that it was your good faith belief that these surveillances were lawful, was that based on other practices of other Attorneys General for 25 years or so prior to your tenure?

A It was. It was based on departmental policy which existed when I arrived on the scene.

MR. CHRISTENBURY: Thank you.

MR. SLOCOMBE: Thank you.

(Whereupon, at 4:45 o'clock p.m., the taking of the instant deposition ceased.)

_____

Signature of the witness

SUBSCRIBED AND SWORN to before me this _____ day of _____, 1975.

_____

Notary Public

My commission expires _____.

[96] CERTIFICATE OF NOTARY PUBLIC

UNITED STATES OF AMERICA

ss.:

DISTRICT OF COLUMBIA

I, JOANNA B. LICHTMAN, the officer before whom the foregoing deposition was taken, do hereby certify that John N. Mitchell, whose testimony appears in the foregoing deposition, was duly sworn by me, a Notary Public in and for the District of Columbia; that the testimony of said witness was recorded by me by Stenomask and thereafter reduced to typewritten form under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative of or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

_____

Notary Public in and for the District of Columbia

My Commission expires June 14, 1978.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1187-13

MORTON H. HALPERIN, ET AL., PLAINTIFFS,

v.

HENRY A. KISSINGER, ET AL., DEFENDANTS.

Tuesday, March 30, 1976
Washington, D.C.

Deposition of HENRY A. KISSINGER, taken on behalf of the plaintiffs, in the Secretary's Conference Room, Department of State, Washington, D.C., beginning at 4:13 p.m. before Terry Barham, a notary public in and for the District of Columbia, when where present on behalf of the respective parties:

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PROCEEDINGS

Whereupon,

HENRY A. KISSINGER

was called as a witness and, having been duly sworn, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR PLAINTIFFS

BY MR. SLOCOMBE:

Q For the record, this deposition is taken pursuant to notice. We understand, Dr. Kissinger, that you have to leave at 7 for a prior commitment, and we will try and finish by that time, but we will continue if necessary.

How long have you known the plaintiff, Morton Halperin?

A We met at Harvard. It was in the sixties. I don't remember the exact year—'62, '63, somewhere in there.

Q Could you describe your decision to hire him to work on the NSC staff as to time and the reasons for your decision?

A Well, Mr. Halperin was my assistant in the Defense Policy Seminar at Harvard for I forget how many years—one or two years. And I had known him favorably prior to that due to his work at Harvard. Somewhere in that period he worked in Washington in the Defense Department for a while. [6] I don't have the time exactly straight. But, at any rate, he and I used to talk that, even before I went to Washington, that if I ever went to Washington I would recommend him, or if anyone I knew got to Washington, because of my high opinion of him.

Therefore, when I was offered the position of Assistant to the President, he was one of the first people I contacted. I think it was in December of '68.

Q So that he began working for you prior to the inauguration?

A That's right.

Q And can you say briefly the reasons why you hired him for the position that you wanted him to perform on the NSC staff?

A Well, first, I seem to have a recollection that he did planning when he worked for ISA, but then he went—he seemed to me to have an unusual combination of theoretical and practical ability. The position he was to perform on the NSC staff was actually partially designed by him as to where he could be more useful. We had many conversations prior to my actually moving to Washington, after I had been appointed but before I took my position, in which we jointly designed his position, and he was supposed to do the planning [7] within the NSC staff, that is, the definition of the options. And that out across the geographic divisions within the NSC staff, and the technical divisions.

Q With whom did you discuss your decision to hire him to work for you at the White House?

A I frankly don't remember if I discussed it with anybody before I hired him. After I hired him, I certainly mentioned him, together with many others, to the President, and certainly to Haldeman and probably Mitchell. But I don't remember the exact sequence here.

Q In your answers to the written interrogatories, you indicate that Senator Goldwater and General Wheeler raised some objections to his being hired.

A That is correct.

Q What was the nature of those objections?

A The objection of General Wheeler was twofold—one, that Mr. Halperin had, in his view, systematically leaked matters concerning the Vietnam war while he was in the Defense Department, and, secondly, had, in the view of General Wheeler, systematically undercut the military. This is one of the conversations I remember. I expressed by strong view that I needed Mr. Halperin, that I was generally familiar with his views, and that, in any case, I was responsible for the basic [9] holdover from the previous

Administration, who had systematically undermined the military, or something to that effect. And that was one discussion.

And Mr. Mitchell also had been approached by Senator Goldwater.

Q About Dr. Halperin?

A That's right.

Q That letter was addressed to President Nixon and would presumably be in the White House files?

A That is correct.

Q You were not given a copy—you saw a copy?

A I saw a copy at the time. I have also since seen a copy.

Q Do you know where a copy exists now?

A I think we have a copy.

MR. KEUCH: Would you like a copy produced?

MR. SLOCOMBE: Yes.

MR. KEUCH: I think we should make clear for the record that the copy is an unsigned copy. As you have indicated by your question, Mr. Slocombe, the original, we assume, is in the White House files.

MR. SLOCOMBE: And the copy was obtained from Senator Goldwater?

[10] THE WITNESS: That's correct.

MR. SLOCOMBE: Just for the record, we have filed comprehensive document requests, and as documents relevant to the matter came to light, it has been the practice that they are sent to us, and we would appreciate it if that continues.

BY MR. SLOCOMBE:

Q In your discussions with Attorney General Mitchell and Mr. Haldeman, did any of them, other than what Mr. Mitchell had been told by Senator Goldwater, did any of them express any opinion as to hiring Morton Halperin?

A My recollection is that Mr. Haldeman made a general objection to many of the types of people that I had hired, because many of them were holdovers from the previous Administration, and Mr. Halperin's name was generally cited as the prime example.

Q Other than that, were there any discussions at which objections were raised to hiring Morton Halperin?

A That is all that I now remember.

Q And it is these discussions that you had reference to in Salzburg when you said that two of the people, one of whom presumably is Morton Halperin, were hired over the strong objections of all my associates?

[11] A That is correct.

MR. KEUCH: Mr. Slocombe, at this point, we have also been able to obtain recently a copy of the letter referred by—to Attorney General Mitchell from Mr. Goldwater. Would you like a copy of that record?

MR. SLOCOMBE: Yes.

MR. KEUCH: I might note that that is excised only in accordance with our protective order to protect the indentity of third parties.

BY MR. SLOCOMBE:

Q In your answers to the interrogatories, you discuss some ojections raised on security grounds, other than General Wheeler's objections.

Why did you not include in your answer to the interrogatory, General Wheeler's claim that Mr. Halperin had systematically leaked information about the war?

A Well, I didn't give any of the reasons. I simply stated that in my recollection he recommended against Mr. Halperin's employment, I did not state the reasons why he recommended against it.

Q One of the items identified in your Senate testimony—and this is not the reference, it is not in the printed version, it is on page 14 of your answers—refers to line 38 of page 182 of the printed transcript of that testimony, and [12] similarly on line 40. The substance is that he falsified a passport application with respect to his connection, his contact, with Soviet citizens, and that he had not reported on a passport application a visit to the Soviet Union that he had made previously.

The document which we believe is referred to is this, which will be Plaintiff's Exhibit A.

(The document referred to was marked for identification as Plaintiff's Exhibit A)

MR. KEUCH: Mr. Slocombe, do you have the Senate testimony rather than just refer to a line out of context? It will be helpful if we have it.

MR. SLOCOMBE: It is page 182. The full text of your answer would be, "In the case of Halperin there was an FBI allegation that he falsified a passport application with respect to his connection with his contact with Soviet citizens, and that he had not reported on a passport application a visit to the Soviet Union that he had made previously."

We have obtained through the Justice Department from various sources Dr. Halperin's security file, and the only document in it we could find which appears to be the subject of this reference is a statement of personal history, [13] which is Plaintiff's Exhibit A.

BY MR. SLOCOMBE:

Q That is, is it not, not a passport application but a form that one fills out to get a security clearance?

A I don't know what this statement is, and I had never looked at Mr. Halperin's security file.

Q How, then, was the allegation conveyed to you that the FBI had maintained that there had been an error in a passport application?

A This was mentioned to me orally on a number of occasions, once by Mr. Ash—and I forget all the FBI sources, but I had heard that statement on several occasions.

MR. SLOCOMBE: The Plaintiff's Exhibit B will be a 10 July 1968 memorandum from a security official in the Department of Defense, which was referred to in your answers to interrogatories.

(The document referred to was marked for identification as Plaintiff's Exhibit B)

MR. KEUCH: Give us what question that is, Mr. Slocombe.

THE WITNESS: Maybe that is what I was referring to. [14] BY MR. SLOCOMBE:

Q Are you quite sure that it was a discussion with people who were relying on FBI sources that these allegations were made?

A I think it ought to be clear that something that happened six or seven years ago, and that was not the principal occupation in my life, would not leave me with precise recollections of who said what. A few things I remember precisely. This got into my universe of knowledge, and I would not be absolutely certain by what avenue it got there.

Q In your discussion with the Senate, discussing this matter, you said—and this is supplying the insertions—on page 183, "In the case of Halperin I thought that given the many travels he took, it was an understandable lapse that he would forget to put down every last trip that he had taken over the requisite period."

Does that fairly state your continuing view of the business about the form?

A I was told by Mr. Ash at the end of January when he called on me with respect to Halperin's security clearance, that in his view, in cases of doubt, it should be resolved in favor of the government and against the applicant. I did not look at the file myself, I had General Haig look at it. [15] In thinking about it, that was my view then. I insisted that a security clearance be given. And it obviously remains my view.

Q With reference to General Haig's role, you said to the Senate Committee—or he said to the Senate Committee—"I would say around April or May 1969, Dr. Kissinger asked me to review for him a number of security files on personnel that he had assigned onto his staff and on which there was some grievous controversy whether these things should be taken on the staff. In several instances, the former security officer for the National Security Council staff had recommended against their being given clearances, and Henry asked me to look at their background files and give him a judgment as to whether or not they were victims of overly zealous criteria, and in each instance I did come to the conclusion—and I told him so."

Is that an accurate summary of your instructions to him?

A That is substantially accurate.

Q And that his conclusion was that the objections were what he calls "overly zealous criteria"—based on what he calls "overly zealous criteria"?

A I had not thought of it in these terms, but it is [16] a fair summary of our judgment.

Q With respect to Mr. Ash's view, Plaintiff Exhibit C is a handwritten memorandum to you from Mr. Ash, which, reading from a slightly better copy, reads as follows. It is dated March 3, 1969. "Dr. Kissinger re Morton Halperin. 1. The attached FBI summary reflects generally favorable information resulting from the FBI background investigation. 2. The reference to the mother (page 10) does not appear to have significance. 3. FBI informed me that they interviewed Halperin to alert him to the Soviet intelligence interest (page 12). 4. Teach-in activities (page 11). 5. Soviet contacts (page 13-14). 6. Vietnam views (page 15).

"I will pick this up from your office when you are through with it.

"Ash."

(The document referred to was marked for identification as Plaintiff's Exhibit C)

Do you remember receiving that memorandum, or a memorandum to that effect, from Mr. Ash?

A I don't remember it, and you have to remember—you have to keep in mind that my office received hundreds of documents a day, that my usual procedure was to turn this sort [17] of thing over to General Haig and ask for his recommendation, and we would at the end of the day discuss orally the issue that would be presented by a case such as Halperin's, particularly when I had formed some fairly definite views about it already. I don't remember that.

Q I call your attention to the initials "HAK" in the upper righthand corner, and ask whether they indicate in any way whether you would have seen this note?

A Well, normally—normally, when I indicate that I have read it, I make an "HK" in this form. This is the way that I would indicate it. This would not be my mark on this

document. And I don't say I didn't see it. I am certainly generally familiar with its contents.

Q Does anything in that reflect a recommendation by Mr. Ash not to hire, or not to clear, Morton Halperin?

A The recommendation of Mr. Ash to me was made orally, and it was expressed in the language that I have repeated here, which was that there was a substantial doubt and that this doubt should be resolved in favor of the government, even if there was not enough technical information to deny a clearance on security grounds.

Q And that statement was made orally, if I remember [18] your earlier testimony correctly, in January of 1969?

A Shortly after I came into my position, yes.

MR. SLOCOMBE: The next exhibit, I think is E—is a February 25th, 1969, memorandum to you from Mr. Ash.

(The document referred to was marked for identificatin as Plaintiff's Exhibit E)

THE WITNESS: By the time this handwritten note, to get back to the previous question, was submitted to me, Mr. Ash already knew my feeling, since I had told him orally that I was leaning in the other direction.

MR. SLOCOMBE: The second paragraph of that memorandum reads: "The FBI has completed its investigation and the results have been made available for your consideration. From the standpoint of loyalty and security, no adverse information has been developed which would preclude confirmation of the initial clearance action. Accordingly, in the absence of advice from you to the contrary, there is being continued in effect the NSC top secret clearance previously granted to Mr. Halperin."

BY MR. SLOCOMBE:

Q Do you remember receiving that memorandum?

A I don't remember it, but it has an initial in the [19] upper righthand corner which looks as if I had read it.

Q So that by the end of February, 1969, Mr. Ash was prepared in writing to withdraw whatever objections he may have made previously?

A I would have to be precise—at the end of January, 1969, he had not made a formal objection either. He had simply pointed out to me that, while he was not entering a formal objection, he wanted me to be aware of the fact that doubts should be resolved in favor of the government, and Ash's subsequent actions would be consistent with that previous position.

Q On page 20 of your answer, you said "My recollection is that Mr. Ash recommended against hiring Mr. Halperin."

A That is correct.

Q The reconciliation is, as you stated—that is, that he had a general view, but he did not press it.

A He recommended to me that I should not proceed with the hiring, though he did not have conclusive evidence on which to base an adverse security recommendation.

Q Why, if his only view was that he did not have conclusive evidence, would he have put in a letter to you "From the standpoint of loyalty and security, no adverse information has been developed which would preclude confirmation of the initial clearance action."?

[20] MR. KEUCH: Mr. Slocombe, I have to object to that question as asking the witness to speculate as to what was in Mr. Ash's mind. I think that the person to address that question to is Mr. Ash.

For the record, I will instruct the witness not to answer.

BY MR. SLOCOMBE:

Q Did you have any discussion with Morton Halperin in 1969 about his security file, which you recall?

MR. KEUCH: Mr. Slocombe, could we take a pause just a moment, go off the record for just a minute? I need a minute to look through the interrogatories.

(Off the record briefly)

MR. SLOCOMBE: Back on the record.

THE WITNESS: I have no precise recollection of any conversation except one that I had in May, in which—

BY MR. SLOCOMBE:

Q Other than the one in May.

A I have no recollection of one.

Q When you hired him and confirmed his clearances, did you regard the security points that had been raised in respect to his case as raising any question in your mind as to his discretion or ability to keep confidences?

[21] A No.

Q Turning now to the latter part of April, 1969, you said in your answers to the interrogatories, with reference to a meeting—page 17—for reference we have numbered the lines. We are talking now about lines 11, 12 and 13 on page 17. "The meeting among the President, the Attorney General and Mr. Hoover took place in the Oval Office of the White House. It was in progress when I was called in. President Nixon, Mr. Mitchell and Mr. Hoover were present."

It is your clear memory that Hoover, Mitchell and President Nixon were all in the same room when you entered?

A Yes.

Q Reading from lines 5 through 9 of the same page—"It appears that this meeting most likely occurred on April 25, 1969. On that day, according to White House, FBI and Department of Justice logs, the Attorney General and Mr. Hoover were at the White House before leaving with the President by helicopter for dinner at Camp David."

I take it that you did not remember the specific date initially?

A I did not.

Q And what review of documents, logs or other materials was made as the basis for the answer which I have just [22] read?

A The review of White House logs of Presidential phone calls and Presidential meetings, which suggested that April 25 was the day on which the President called Hoover several times, or at least called him—I don't know whether it was several time—that can be determined—and in which they then went to Camp David, and it fitted the time frame in which I remembered the meeting having taken place.

Q Who performed this review of the logs on your behalf, unless you did it yourself?

A I didn't do it myself, and I frankly don't remember.

Q Who told you the conclusion that they had reached that the White House, FBI and Department of Justice logs indicated that the Attorney General and Mr. Hoover were at the White House?

A Well, I looked at the White House log myself. Now, where that is I don't know. And that was produced for me by my then White House office. That log I reviewed myself. The Justice Department logs I didn't review.

MR. KEUCH: I think, if you have no objection, for the record I think we should mention the review we are talking about took place prior to Dr. Kissinger's appearance at [23] the July '74 hearing. Is that the review that you are referring to?

MR. SLOCOMBE: I don't know. It is whatever review it was that led you to the conclusion that it was on April 25, 1969—

THE WITNESS: Prior to the July '74 hearing.

BY MR. SLOCOMBE:

Q Do you remember who you consulted in the course of preparing for those hearings?

A Well, I consulted with General Haig, and I probably asked General Scowcroft to find me the logs from which one could deduce at what day Mitchell, Hoover and the President were most likely to have been in the White House. And then from the general activity of the President that day, it was deduced that this was the most likely day.

Q I show you what I take to be a White House log, probably the one you are referring to, which is Plaintiff's Exhibit F, April 25, 1969.

(The document referred to was marked for identification as Plaintiff's Exhibit F)

The omissions have been represented to us as not including any reference to any defendant in this case, other [24] than presumably the President or Mr. Hoover, that is, it has been represented to us that we have on this page all references to defendants in this case and Mr. Hoover—also on the second page.

Does any part of that log indicate that Mr. Hoover was at the White House at any time on that day? I realize there is a reference to a two-minute telephone call at the bottom of the first page. That is not a reference as being at the White House.

A Well, he was certainly at the White House to meet with the President on the helicopter.

Q I call your attention to the document identified as Appendix D, which is the fourth page, which is a list—purports to be a list of people who were on that helicopter flight. Mr. Hoover's name does not appear.

A Well, I can't explain that.

Q Do you have any reason to believe that the list of who was on the helicopter would not be correct?

A I have no reason to believe anything with respect to that. I just don't know how these records were kept.

Q Excuse me?

A I don't know how the records with respect to helicopter flights were kept.

[25] Q But what part of this log was it that led you to the conclusion that it must have been April 25th, because the log showed that Hoover was at the White House on that day?

A My understanding was that Mr. Hoover had been on the helicopter and that he had spent the evening in Camp David with Mr. Mitchell and the President.

Q There has been some speculation that Mr. Hoover and Mr. Tolson, who—at least Mr. Hoover—didn't like airplanes, drove up. It is clear that they were at Camp David. You were not at Camp David.

A I was not.

Q Do you have any further information, any other log or White House records, other than the ones that have been produced to us, in connection with our various requests, to support the reference to White House logs, FBI and Department of Justice logs, showing that Mr. Hoover was at the White House on the 25th of April, 1969?

A I don't have any, no.

Q You referred in an earlier answer to having looked at a log personally. Is this the log that you looked at?

A I looked at a log—I don't know whether that is the log.

Q Then I will repeat my question. I ask you again [26] to look at this log carefully, and tell me whether it is the log which you believe you consulted.

A I was under the impression that I had seen something that indicated that Mr. Hoover had been at the White House that day. Now, I cannot explain—I have no specific recollection of what particular log I looked at.

Q Did it look similar in format to this?

A I suppose so.

Q Do you have any doubt that this is the log that you looked at?

A I did not personally review all the evidence with specific care. I asked people to look for a date in which this could have happened, since my recollection of the meeting is extremely precise.

Q But you also testified that you personally examined the log, which indicated that Mr. Hoover was at the White House.

MR. KEUCH: Mr. Slocombe, where is that testimony?

MR. SLOCOMBE: What he just said a few minutes ago.

MR. KEUCH: I think he indicated that he examined—in his answer to the interrogatories, which you referred him to on page 17, he talks about the various documents—in answer to question 14, White House, FBI and Department of Justice [27] logs, as to setting up the date of the meeting.

MR. SLOCOMBE: If I understand his testimony this afternoon, it was that, although he did not examine all the evidence, he did personally look at a White House log, and I am trying to establish whether that log is the document which is Plaintiff's P.

MR. KEUCH: I will accept the version of a White House log, that's fine.

MR. SLOCOMBE: There is Mr. Hoover's diaries and his list of phone calls, and I understand the testimony to be that he didn't examine that, but he did examine the Presidential diary, the White House log.

This is the only White House log which has been provided to us, as a White House log of April 25th.

BY MR. SLOCOMBE:

Q Were there any other documents which you relied on in reaching that conclusion?

A No.

Q Does this discussion in any way refresh your recollection as to who the people were when you consulted about this matter in, I take it, April of 1974, or prior to your testimony in April of 1974?

A I am sure I talked to General Haig and I talked to [28] General Scowcroft to see whether they could find out from the records that they had available what was the most probable date that this meeting took place.

Q Turning to the substance of your answer with respect to the discussion at that meeting, on page 18, lines 4 through 9, you said "I was also told that three categories of individuals would be subject to wiretaps: those with unfavorable information in their security files, those who had access to information which had leaked, and those

whose names appeared as sources or recipients of leaked information in FBI investigations, including wiretaps."

Was it your understanding that every one in those categories was to be tapped?

A I don't know whether I formed a concrete opinion whether it meant that everybody in those categories would be tapped, but that certainly people in those categories would be eligible. Or would be submitted for investigation.

I have also testified that the submission of a name included a high probability of a wiretap, not the certainty of a wiretap.

Q Your answer says that these would be people who would be subject to wiretaps. Was there a different discussion of people who would be investigated?

[29] A The presumption was that in the investigation of these categories of people, wiretaps could be used.

Q Did you form any understanding as to how the group of people who would fit these categories would be narrowed down to those who would actually be wiretapped?

A My impression was that those in the category—who had unfavorable information in their security files, would be supplied by the FBI, and indeed were supplied at that first meeting by Mr. Hoover; who were the prime subjects—who emerged as the likely suspects in an investigation, was left undermined, but the probability was that since the investigation was conducted by the FBI, they, too, would be submitted by the FBI. Those who had access to the information which had leaked would generally be supplied by my office. And that was, in my mind, the rough division that was to be followed.

Q And the person had to come in both categories to be tapped?

A There had to be a leak or some event which required the submission of a name. Those whom Mr. Hoover had designated as his having doubts about their security status were obviously subject to these investigations, and who

would emerge as a [30] suspect during the course of the investigation would have to be left to the investigation.

Q Was being a holdover from the previous Administration a criterion for inclusion in the list?

A No.

Q I would like to call your attention to lines 11 through 13 of the answer—"I was asked to supply the names of key individuals having access to sensitive information which had leaked."

By whom were you asked?

A I have no specific recollection which individual. The consensus of the meeting was that these were the three categories, and that it was my responsibility to supply those names. And the general decision was made by the President.

Q I call your attention to your answer to question 388, which appears on page 30, when you say "There were a number of persons who knew about the Cambodia bombing. They included the President, those in the military line of command who carried out the bombing, the Secretary of Defense, staff officers and others assigned to the project, persons in the White House situation room, Chairman of the Joint Chiefs of Staff, and, in my office, General Haig, Mr. Eagleburger, Halperin and probably Sneider."

[31] That would be a substantial number of people, would it not?

A That is correct.

Q What, then, is the force—and I take it that you never supplied a list of all the people you think of who in fact had access to the information?

A My primary responsibility was to supply the names of those people in my jurisdiction who had access to the information.

Q Then did you supply a list that included yourself, General Haig, Mr. Eagleburger, Mr. Halperin and Mr. Sneider to anybody?

MR. KEUCH: Mr. Slocombe, we are going to object, because, as you know, we have taken the position that in

this case we cannot go into whether other people were involved in this program. We think that we are defending this particular surveillance, and the questions are how Mr. Halperin was on a list under these criteria.

And we will object to the question as to whether other individuals were in fact reported.

MR. SLOCOMBE: I am not asking whether these people were wiretapped or not, I am asking—he has identified these as the people who had access—he has already identified them. [32] I am asking whether he ever conveyed that list of people who had access to anybody else.

MR. KEUCH: You are asking whether or not he conveyed a list, and the purpose of conveying the list was to conduct an investigation. And our position has been clear throughout that we are concerned about the investigation of those steps taken in regard to Mr. Halperin, not as regards third parties.

BY MR. SLOCOMBE:

Q Let me ask the question this way and see if you persist in the objection.

Did you supply a list to anyone of all the people who, to your knowledge, had access to the Cambodian bombing information without regard to whether they had adverse security information in their files or whether they were likely to have leaked?

MR. KEUCH: I have no objection to that question.

THE WITNESS: We submitted several names, but not all the names.

BY MR. SLOCOMBE:

Q Your answer, then, is that you did not in fact supply a list of all the people who had access to the bombing information?

[33] A That is correct.

Q Did John Davidson and ___ have access to the bombing information?

A No, they were there under different criteria.

Q On page 18, lines 26 through 28, you said "In the course of the meeting I was assured that the wiretap program envisioned was entirely lawful in the opinion of the Attorney General, and that the Bureau had established procedures for such a program."

What did you understand those established procedures to be?

A Explain the question, please.

Q You said that you were assured that the Bureau had established procedures for such a program, that is, a wiretap program.

What did you understand those procedures to be?

A The FBI procedures, insofar as they might relate to my office, were to submit for investigation of a leak the names of people who had had access to the leaked document, the names of people that had been previously established as having questions raised with respect to their security status, or the ____ of people who somebody had identified as the prime suspects in the investigation as a result of an investigation. These [34] names were submitted, then, by General Haig to—with my authority—to the FBI. The FBI then made the decision as to which procedure to follow, that is to say, whether in fact the investigation would include wiretapping. They would then get the authority for the wiretap from Mr. Mitchell, and if the wiretap showed information that they believed to affect national security, the FBI would then inform my office of that fact.

Q With reference to how a wiretap would be conducted once installed, what was your understanding as to what records would be kept with respect to the wiretaps?

A You have to understand that this was a very minor part of my activities, and therefore I did not address the details of the operation. All I knew was that periodically, very rarely relatively, a letter would show up in my office calling attention to what in the FBI's view was a national security comment made by some of the people that were being wiretapped. These letters did not include all of the

names that had been submitted, and therefore we had no way of knowing whether in fact every name that had been submitted was in fact wiretapped.

These reports would come to my office, and I would note them when I read them, which was even rarer than when they came to [35] my office.

Q Turning to the question of the names that you submitted—among the names of those who had access, how did you decide which ones to submit?

A I attempted to keep it to the smallest number possible. If somebody fitted more than one category, then that was an obvious name to submit.

Q You understood that you were to apply some of the other categories as well as the category of who had access?

A I in any event considered that I had to submit the names of those that had been listed at this Oval Office meeting. When they also had access to the information, that was an additional factor.

But in fact we submitted all the names that had been established fairly quickly.

Q Established when?

A At that meeting, which I assume was on April 25th.

Q Those names were Halperin, Sonnenfeldt and Brandon.

MR. KEUCH: We will object to any part of the question other than as to Mr. Halperin.

BY MR. SLOCOMBE:

Q Is it a fact that of all the persons who had access, who worked for you, the only name that you submitted was [36] Morton Halperin?

A In that first group, that is correct.

Q With respect to the procedures, you, then, had no understanding as to what records would be kept?

MR. KEUCH: Excuse me, make it a little more specific. Are we talking about the FBI procedures?

MR. SLOCOMBE: The FBI procedures—well, assuming the FBI was to run the tap, yes.

THE WITNESS: I had no knowledge of what they were doing.

BY MR. SLOCOMBE:

Q With respect to how reports would be filed?

A All I knew was that there would be two reports, one coming to my office and one coming to the President's office, which I assumed went to Mr. Ehrlichman.

Q Did you have any understanding with respect to whether the actual tapes of the overhears would be retained by the FBI?

A I have no knowledge, I never saw one.

Q Did you have any understanding with respect to whether there would be renewal authorizations at regular intervals?

A I again have no knowledge of that.

[37] Q Did you know that the FBI procedures in fact required such renewal?

A No.

Q There was no discussion that you ever attended of not following these regular procedures?

A No.

Q Was there any discussion of minimizing unnecessary interceptions, that is, interceptions not related to national security information?

A This whole subject was one that I did not particularly understand or was particularly wild about. I assumed that there was a regular procedure which the FBI followed, and all I received was the final product in the form of a summary letter.

Q But you did not participate in any discussion of avoiding the interception of privileged communications, for example, as a category of minimization?

A I just had no way—I never received any and, therefore, I didn't even know whether they did it. All I received were letters that in the judgment of the FBI bore on the question of national security.

Q Did you have any discussion at this time or any other time as to the length of time the taps would be on?

[38] A No.

Q To go back to a prior answer, you say it is not a subject you were wild about.

Would you explain what you mean by that?

A Well, Mr. Halperin had been a close associate of mine for many years. I could have solved the problem very easily by letting him go. I wanted to keep him on my staff and to keep an association with him. And I reluctantly went along with this approach as the lesser of two evils, in my view—and as being necessary in the interest of national security.

Q I call your attention to two references on page 18, one on line 16 and one on line 29, in which you say in your answers, in the first case, "Director Hoover identified four persons as security risks, and suggested 'that these four be put under surveillance initially.' " And then, on line 29, "Director Hoover assured President Nixon that wiretapping in similar situations had been a common practice in previous Administrations."

You affirmatively remember hearing Hoover say those words in your presence?

A Yes, because this was a rather startling piece of information to me. And the context of the discussion was, [39] President Nixon asked him what could be done about the leak problem, and Mr. Hoover replied that the only solution was wiretapping, which had been done extensively, as I remember his words, in the previous Administrations. I have no evidence of that, but this is what he said.

Q In the discussion of the Attorney General's opinion on the lawfulness of the program, referred to in line 27 and 28 of your answer, how was that opinion expressed?

A The Attorney General indicated that he had the legal authority to institute such a program and that, therefore, it could be handled by the Justice Department.

Q Did he make any reference to the source of his legal authority?

A No.

Q Did he refer to any cases?

A No.

Q I ask the question only because there has been testimony, in an oral discussion—the name of a case called Katz and Berger was mentioned by the Attorney General. Do either of those names refresh your recollection as to whether he referred to specific cases?

A I don't believe that any cases were mentioned in that conversation. They might have been mentioned in some [40] other conversation.

Q Was there any discussion of any limits imposed by law or by the Constitution on wiretapping?

A No. The whole discussion was in the context that there was a well-established practice, extending over many Administrations, which would be followed.

Q There was, therefore, no discussion on the procedures for initiating the tap, whether there had to be regular reauthorizations, how long it could go on, what kind of information could be picked up?

A The procedure for initiating the tap was as I described.

Q I don't mean in identifying names for this particular case, but whether a warrant was required, what kind of information was necessary. There was no such discussion?

A No, and I didn't inquire into it, given the type of people who were present.

Q Meaning the President and the Attorney General and the Director of the FBI?

A The President, the Attorney General and the Director of the FBI, all of whom seemed to affirm without challenge, in the fourth month of an Administration, that this was a practice that had been followed in the past—and, indeed, in [41] the case of one person on my staff, I

had been offered wiretap information when he was hired. So this reinforced my view that it was a common practice.

Q I take it that that person was not Morton Halperin?

A It was not Morton Halperin.

Q On page 18, lines 23 through 25, "It was my understanding that President Nixon directed surveillance of the persons. . ."—

A I did not, incidentally, accept—I did not look at the wiretap information at the time, but it was told to me that it existed.

Q "It was my understanding that President Nixon directed surveillance of the persons then suggested by Director Hoover."

What was the basis for that understanding?

A My understanding was that the President ordered the whole program, and that this included the names of the people that Director Hoover had mentioned.

Q Did he say anything to that effect?

A The understanding with which I emerged from that meeting was that the whole program was approved, including that the authority was given to Hoover, not to me—the authority was given to Hoover to tap those people that had [42] been mentioned.

Q Did it mean to you that Mr. Hoover was to start taps on those four without any further instruction or signal from anyone, if he decided it was necessary?

A My understanding at the time was that this would be a procedure that would go into effect when there was another request for a security investigation—for an investigation of news leaks. My impression was that he substantially had the authority once the investigation started.

Q Who would have to request such an investigation to trigger these four taps?

A The investigation would be triggered by a news leak of a kind that had been identified by the President as constituting a national security problem.

Q Was Mr. Hoover to decide when a leak was of that character?

A Well, in practice—I don't know if that question ever was decided. The fact of the matter was that on May 9 such a leak occurred, and I was asked by the President to call Mr. Hoover to start an investigation, and that is what appears to have started the whole process.

Q And the four people who are involved includes Henry Brandon?

[43] MR. KEUCH: Again, we are going to raise an objection to anyone other than Mr. Halperin.

MR. SLOCOMBE: This testimony illustrates the difficulty of that position. The argument is, Mr. Hoover had authority to tap four identified people on the happening of a certain event. There is a good deal of evidence in the public record that that list of four people included a person who was not tapped on the 9th or 12th of May.

And it seems to me very relevant to question the origins of the Halperin tap, whether it in fact grew out of this list of four or out of some other basis.

MR. KEUCH: Well, again, I can't accept the characterization that it is the argument that. If you wish to say that there has been testimony that—

MR. SLOCOMBE: Testimony.

MR. KEUCH: But, again, it is our position in this case, as it has been consistently, that we have to defend the surveillance in this case, of Mr. Halperin, and that he has no standing to raise the surveillance involving anyone else.

MR. SLOCOMBE: We are not raising any claim on the basis of anybody else being surveilled. We are trying to find out the circumstances of Mr. Halperin's surveillance.

MR. KEUCH: I think in being given the criteria and [44] the circumstances under which names were provided, the fact that when Mr. Halperin's name was provided—I think we have satisfied these requests, and we will object to a question concerning any third party.

MR. SLOCOMBE: I think it is not a matter of dispute that the four who were listed—the four who are referred

to on page 18 by initials, that is, (A), (B)—and (C) and (D) are the same person, I think we have agreed to that—and that the person who is referred to as (C) and (D), whom we believe to be Henry Brandon, but I don't want you to confirm or deny that, if it is your position you won't—was not the fourth person who was on the list that was sent over on May 10.

Is that common ground?

MR. KEUCH: Well, I think you can characterize the public record any way you wish to, sir, but I think as to the record in this case our position is that we will not discuss the identity of third parties, for the reasons stated.

MR. SLOCOMBE: I am not asking you to discuss identity, I am asking you to discuss—are we agreed that the four names referred to on page 18, that there are indeed only four names referred to on page 18, although there are four initials plus Halperin—and that the person referred to as (C) and (D) is not one of the four—on page 31, there are three initials, [45] N, O and P. First of all, it has been represented to us that those are all the same person, and that that person is not the person referred to as (A), (B) or (C) and (D).

We are talking about two lists of four which differ in one name.

MR. KEUCH: If your question to me, Mr. Slocombe, is, are (C) and (D) the same individual, on page 18, I will state that that is so. And I will agree with your characterization — I think we have already informed you previously.

MR. SLOCOMBE: To get it on the record. Just to be clear, on page 31, N, O and P are the same person, and that it is not the person referred to as (C) and (D) on page 18.

MR. KEUCH: Right.

BY MR. SLOCOMBE:

Q Dr. Kissinger, that corresponds to your understanding of those answers as well?

A What is the question—what is the precise question?

Q How the code letters work.

MR. KEUCH: On this response as to the four individuals, the statement is the fourth was (C), when Hoover had claimed the connection. I believe the Director also permitted physical surveillance of (D). While protecting [46] the identities of third parties, we have informed counsel that (C) and (D) are the same individual.

THE WITNESS: Yes, that is my understanding also. That (C) and (D) are the same individual?

MR. KEUCH: The Secretary has not had the benefit of—on your request we did check those records to make these responses to you.

Why don't we defer that question, if we can, and—

THE WITNESS: Why don't I check it during the break, and then answer that question.

MR. KEUCH: That would solve the problem.

MR. SLOCOMBE: All right.

BY MR. SLOCOMBE:

Q Exhibit C is an affidavit which you filed in another litigation, but it refers to this wiretap, as is clear from paragraph 2 of the affidavit.

(The document referred to was marked for identification as Plaintiff's Exhibit G)

Paragraph 7 reads "In early May 1969, after the first several unauthorized disclosures of classified information had occurred, the President consulted the then Director of the Federal Bureau of Investigation, J. Edgar Hoover, and [47] the then Attorney General of the United States, John N. Mitchell, concerning methods to be employed to deal with the problem. The President was told by Mr. Hoover that the most effective method was that that had been followed in previous Administrations, namely, the conduct of electronic surveillance in accordance with specific procedures.

"The President was assured by Attorney General Mitchell that such action would be in compliance with law. My office was required by the President to submit the

names of those officials who had had access to the information which had been leaked. Obviously my office was the natural place for the information to exist and Dr. Halperin, in his position as Chief of the National Security Council Planning Group, was unquestionably one of several persons who had had access to such information."

Why in that paragraph did you not include any reference to Mr. Hoover being the person who first named Dr. Halperin as a person to be tapped, or suspect of leaking?

A Because in this paragraph I was addressing that part of it which applied to my responsibility. The difficulty in the case of Mr. Halperin is that he fitted every criterion that had been established.

Q But the paragraph refers, does it not, to what the [48] President was told by Mr. Hoover and what the President was assured by the Attorney General?

A I have forgotten the context in which this affidavit was submitted, and I can only state what I know to be the facts, which I have done.

Q So you don't want to add anything to why you omitted the reference to Hoover identifying the four people to be wiretapped?

A When this wiretap case first came up in 1973, my recollection was extremely—I did not have an opportunity to go over all the details that later investigations forced me into examining. But beyond that I can't speculate now why I did not give the complete version that I now have at my disposal.

Q Did you remember in November 1973 that Hoover was the source of the names?

A I want to repeat, every category applied to Mr. Halperin, and, therefore, he came up in every category. And it is therefore difficult, without focusing on the particular details, to draw the line between whether his name came up only on the basis of this Oval Office conversation, or whether it was also on the basis of his having access to information, or whether it was on the basis of Mr. Hoover having listed him on May 9 as the prime [49] suspect, since

Mr. Hoover called me on May 9 to inform me that Mr. Halperin was the prime suspect, that he had been a roommate of Mr. Beecher who had written the story.

It is very difficult to draw a distinction here between all the cagetories.

MR. KEUCH: To keep the record complete, Mr. Secretary, I take it the story referred to is the Cambodian bombing story?

THE WITNESS: That is correct.

MR. KEUCH: Thank you.

BY MR. SLOCOMBE:

Q Were there any other discussions in which you participated prior to May 9, 1969, at which countermeasures, including wiretapping—the leak, was discussed, as contrasted to general concern about leaks, but what to do about it was opposed to how serious a problem it was?

MR. KEUCH: By any other meetings, do you mean any other meetings other than the April 25th meeting?

MR. SLOCOMBE: Other than the meeting at which Mr. Hoover and Mr. Mitchell and the President were all at the White House.

THE WITNESS: The subject of leaks was a great preoccupation, and it was frequently discussed, and usually when [50] it was discussed, there were various ideas offered. But I have no specific recollection of any meeting or of any precise measures that were discussed except the general sense of impotence that everybody seemed to have about the problem.

BY MR. SLOCOMBE:

Q Turning now to May 9th, 1969, on page 29 of your answers, you say "Before I telephoned Mr. Hoover on May 9th, I had discussed the leak with the President, who requested that steps be taken urgently to find the source of the leak."

Did you call President Nixon's attention to the Beecher story, or did he ask you about it?

A I quite frankly don't remember.

Q Did the President say what steps were to be taken?

A No, the President undoubtedly told me to get urgently in touch with Mr. Hoover and ask him to start an investigation.

Q Did he relate his request in any way to the supposed discussion on April 25th at which the decisions which you describe on page 18—

A I quite frankly have no recollection of the precise content of the conversation.

Q Well, did he say, get in touch with Hoover and have [51] him find out, or did he say, you remember we discussed a week ago, ten days ago, and now is the time to take the action that we discussed then?

A Any specific thing I would say now would simply be misleading. My recollection is that he told me to tell Hoover to take all possible steps to find the source, and there had been a previous understanding that the next investigation would include the authority to do wiretapping.

Q But you have no specific recollection of any—of the President relating that previous decision to what he wanted done on May 9th?

A I have no detailed recollection of the words which the President used.

Q Did you discuss the Beecher story with anyone else prior to the 10:35 call to Mr. Hoover?

A I might have discussed it with General Haig.

Q Was General Haig in Key Biscayne or—

A No, he was in Washington.

Q The next exhibit, which is Plaintiff's H, is Mr. Hoover's memorandum of his first conversation with you on that date.

[52] (The document referred to was marked for identification as Plaintiff's Exhibit H)

But I want to call your attention not to the memorandum itself but to the newspaper story which is attached. In the middle column, the first paragraph, the latter part of that sentence is ". . . small teams of men are permitted

to slip across both the Cambodian and Laotian borders to locate enemy concentrations of men and material," and then the end of the following paragraph: "Each plane, which normally carries about 30 tons of bombs, lays out a pattern that is a thousand feet wide and four miles long." And then the fourth paragraph in that column: "Over the last two weeks more than 5,000 tons of bombs have been dropped by B-52's in this area, according to one estimate."

Did Morton Halperin have access to that level of detail about the bombing?

A I would not remember that today.

Q Did you?

A Did I have? I suppose I had access to it, but that I ever fixed it in my mind numerically I would question.

Q Who would have had access to that kind of detail?

A I would have had access to that kind of detail, [53] General Haig would have.

Q Who would have had working familiarity with that kind of detail?

A Well, Mr. Halperin well might have, based on his previous experience in the Defense Department. But to reconstruct this seven years after the event is simply impossible.

Q Would not people in the Air Staff have had intimate familiarity with that kind of detail?

A I would assume so, but that is purely speculative.

Q Did you at any point in your discussions with Mr. Hoover suggest that the technical detail that was included within the article might offer a lead as to the source of the story?

A I doubt it seriously.

Q The next exhibit is I, and it is a 505 memorandum of conversation between you and Mr. Hoover, and we have included, as well as the page we have been given, another version of the first page, which comes from a House Judiciary Committee document, because it supplies the big omission in the middle of the first page that you see, the first page in the version that has been supplied to us.

[54] (The document referred to was marked for identification as Plaintiff's Exhibit I)

A Which one do you want me to read, the cover sheet?

Q It is not a cover sheet. The second page is a fuller version of the first page that has been provided to us, full version of the same page.

A The second page?

Q Yes.

A Yes, that one I have seen. What is the question?

Q In your response to Mr. Hoover's list of possible leakers, did you make any reference to the people who

would have had access to the specific material in the Beecher article?

A Are you talking about page 2 now?

Q I am talking about your reaction to Mr. Hoover in this conversation reports that he identified to you a number of people who might, on the basis of everything ranging from their roommates to their Kennedy philosophy, be the source of the story.

Did you at any point in this conversation raise the question of who had access to the specific information contained in the leak, about the bomb path?

[55] A With Mr. Hoover?

Q With Mr. Hoover.

A I did not tell Mr. Hoover how to conduct his investigation. I asked him to conduct an investigation. My responsibility was to identify those people who were on the National Security Council staff or who worked closely with the National Security Council in other agencies, not to run his investigation for him.

Q Did you relate this investigation—in your conversation with Mr. Hoover, did you relate this investigation to the prior decision which you say was made on April 25th to tap four specific people in connection with the next investigation or wiretap?

A The four people were identified as being eligible for wiretapping. When exactly that would happen was left vague. In my mind, I assumed that the investigation of this particular case would be subject to the authorization that was given at that prior meeting, yes.

Q Did Mr. Hoover give you any reason to understand that in fact he had ordered a wiretap of Morton Halperin?

A No.

Q Do you have any explanation of why Mr. Hoover and you had this conversation which discussed suspects of a major [56] leak, including Morton Halperin, on this speculative basis, if Mr. Hoover had instructions from the President to tap four people, including Mr. Halperin?

A This investigation did not concern a wiretap order. This was Mr. Hoover's reply to my request to conduct an urgent investigation, and to let me know as soon as possible what his investigation turned up. This memorandum points out that he identifies Mr. Halperin as a likely suspect, and it stresses the fact that I had often heard this, that my reply was that I had often heard this and had not ever seen any evidence with respect to it.

So the second page, "Dr. Kissinger said he has heard this as speculation, too, but there is no proof." So it is in the context of Mr. Hoover responding to my request on behalf of the President for a full investigation.

Q The allegation that is referred to, is it not that Beecher had, undergraduate school, had a roommate who was now a staff member of the National Security Council.

Was it your understanding that that was Morton Halperin?

A That's right.

Q He goes on to say "There is a strong possibility he may have gotten some of his information from the Southeast [57] Asia desk," and he then refers to systems analysis. He then says "The source we have been working through said it should not be ruled out that a staff member of the National Security Council, who obviously was in a position to know the information contained in all three articles, could have assisted Beecher."

Did you understand that to be a specific reference to Halperin?

A That's right.

Q On page 3 of the memorandum, you are reported by Mr. Hoover as having said, "Dr. Kissinger said he appreciated this very much and he hoped I would follow it up as far as we can take it, and they will destroy whoever did this, if we can find him, no matter where he is."

What was meant by that statement?

A Well, first of all, this is Mr. Hoover's recollection of events. What was menat was that we would discharge him.

Q You don't recall using the phrase "destroy whoever did this"?

A No, but it is possible that I used it.

MR. KEUCH: Mr. Slocombe, since you are at a natural break, can I suggest a break for about ten minutes?

[58] THE WITNESS: If there is anything more about this document, let's finish this document.

MR. SLOCOMBE: No, we have finished with this document.

(A recess was taken at 5:35 p.m.)
(On the record at 5:48 p.m.)

BY MR. SLOCOMBE:

Q Turning again, then, to May 9, 1969, Morton Halperin was in Key Biscayne with you on that day, as I understand it.

A Yes, that is my recollection.

Q Did you have a conversation with him about the Beecher leak?

A I can't fix the exact date that I had the conversation, but I had a conversation with him on or about that date.

Q On page 41 of your answer, in discussing this matter, you say "In any event, in May 1969, or soon thereafter, Mr. Halperin was denied access to some of the most sensitive information."

A That is correct.

Q That, then, was a decision to cut back his access prior to the tap being—either prior to the tap being [59] installed or prior to any substantial amount of information being developed from it?

A That is correct.

Q Did you later offer to resume full access in connection with developing a job which would result in his remaining on the staff—developing a job description?

A I frankly don't remember it, but it seems highly probable that I did, because I was very eager to keep Mr. Halperin on my staff.

Q I would like to call attention to page 193 in your testimony. This is Exhibit J and it is page 193 of the Senate hearings called "Dr. Kissinger's role in wiretapping," with an attached page, which is from page 14 of the answers to interrogatories.

(The document referred to was marked for identification as Plaintiff's Exhibit J)

Senator Pell asks "Why were not the people who were involved fired as an example so as to stop them?

"Secretary Kissinger. As a result of this program there were two violations that I remember . . ." And the insert in the deletion that relates to Mr. Halperin is: "In the case of one other person, we gradually separated him from any [60] classified documents job to such a point he felt he wanted to resign, but this was an attempt on my part to minimize the damage to individuals themselves."

The reduction in access was not the result of anything you learned from the wiretap?

A That is correct. I warned Mr. Halperin that he was under suspicion. I don't remember whether I warned him that an investigation was going on, but I certainly must have left him with that impression.

And my attempt was to reconcile my obligation with preserving national security information with my desire to keep Mr. Halperin on the staff and the relationship I had established with him over the years.

Q Did you indicate who it was that suspected him?

A I believe I told him that several of my associates had their doubts about him.

Q Did that include Secretary Rogers and Secretary Laird?

A I would not remember now whether it included Secretary Rogers, but it would certainly have included Secretary Laird.

Q Turning, then, to the next day, May 10, 1969—and these are matters growing out of your answers to [61] interrogatory No. 39, the answer appearing on page 31.

To clarify this business about the initials, at the April 25th meeting, four people were discussed—Halperin, (A), (B) and a fourth person, as designated in your answers to interrogatories.

I take it from your answer on page 31 that on May 10, General Haig took four names to the FBI—Halperin, (A), and (B), referred to on page 18, and another person not previously named, who is referred to as (N), (O) and (P) in the page 31 answer. Is that correct?

A That is correct, a person who had particularly close access to that information.

MR. KEUCH: This might be an appropriate place, Mr. Slocombe, if you have no objection, we did make the check you requested during the break. The Secretary will accept the statements, the representations that had been made to you about (N), (O), (P), and (C) and (D).

BY MR. SLOCOMBE:

Q You say in line 4 of the answer, "I also gave him the four names selected at the Oval Office meeting. I may have talked with General Haig in Key Biscayne, and probably did, telling him that he should get in touch with Sullivan and furnish names as directed by the President."

[62] Does the phrase "as directed by the President" mean the four names referred to in the previous sentence, or does it mean to furnish names according to categories or criteria?

A It means according to the criteria established by the President.

Q So you understood that you or Colonel Haig had the authority to suggest, to send over names different from the four people discussed at the previous meeting?

A In the category of who had access to leaked information.

Q But your judgment, if I understood your previous answer, was it was not simply a question of who had access, but who came into some other category as well.

A If someone had access and fell into some other category, that made it conclusive. If somebody had access

alone, then it depended on the degree to which—well, it depended on the extent of the access. And we would generally, over a period of time, send over several of the names who had had access at the beginning.

Q On this occasion you sent over only four names?

A That is correct.

Q Who on your staff had the most involvement with the Cambodian bombing—and I include Colonel Haig in the [63] possible people to be addressed in your answer?

A I would say Colonel Haig—General Haig now.

Q Yes, General Haig now. And why was he not included if Colonel Pursley was?

MR. KEUCH: "If" is a hypothetical, if General Pursley was.

MR. SLOCOMBE: Yes.

THE WITNESS: Well, first of all, this decision was made not to include General Haig—and I don't know whether it ever occurred to anybody to include him.

BY MR. SLOCOMBE:

Q I understand that he wasn't included. I am asking why he wasn't.

A There was never any specific decision made. I suppose it was thought inconceivable that he could be the source of the leak.

Q But it was thought conceivable—or if it was thought conceivable that Colonel Pursley, who was also a career military officer—and I take it a close aide of Secretary Laird—was eligible for inclusion, was there a different standard being applied? Or what was the standard being applied?

A I don't know whether we should discuss that.

MR. KEUCH: Yes, I think we are going beyond [64] speculation. I think we are again involving ourselves in whether or not a third person was the subject of a surveillance and what the standards were to that particular surveillance and the rest, and, again, we feel that is not relevant to this matter.

BY MR. SLOCOMBE:

Q You said in your Salzburg press conference that three of the four names that were first sent over were hired over the strong objections of all my associates.

Did the existence of the objections in any way relate to their inclusion in the list of the first four?

A No.

Q Now turn to the FBI documentation, with which I am sure you are familiar. First, a note—and this will be Exhibit K—a note from Miss Gunday, Hoover's secretary, dated May 10, 1969; Exhibit L, a memorandum from Mr. Sullivan to Mr. DeLoach, dated May 11, 1969; and M, a memorandum from Mr. Sullivan to Mr. DeLoach, dated May 28, 1969.

(The documents referred to were marked for identification as Plaintiff's Exhibits K, L, and M)

And I want to call your attention to certain phrases in those three documents.

[65] First, in the Gunday memorandum, "They do not want anything in writing," at the bottom of the second paragraph.

In the Sullivan May 11th memorandum, the phrase about the middle of the second paragraph, "He stressed that it is so sensitive that it demands handling on a need-to-know basis with no record maintained. In fact, he said if possible it would even be desirable to have the matter handled without going to the Department."

A Which are you talking about now?

Q We are talking about—it's Exhibit L, and it is the May 11th Sullivan-to-DeLoach memorandum, and I have read the second, the last two sentences.

A I have that.

Q In the second paragraph.

A Well, I think you should ask General Haig about what he meant by these phrases. What I know is that I received documents at irregular intervals, letters that

summed up what the FBI considered relevant national security information on these people.

What they did beyond this, how they handled their internal bookkeeping, I was not involved in.

Q Did you ever tell General Haig to try to arrange for the taps to be conducted and instituted without any [66] written authorization or with no record maintained?

A I doubt that. I am sure he told them to keep the matter very confidential, but I doubt that I instructed him that there should be no records, since the whole procedure was based on occasional reports coming to my office and also to the President's office via Mr. Ehrlichman.

Q You say you doubt. Does that indicate that you don't have an affirmative recollection of not giving such instructions?

A It is incompatible with my understanding of the procedure that was established. I have no recollection of giving such an instruction. Having no such recollection, I cannot now speculate why I don't have such a recollection.

Q For completeness, the May 28th Sullivan memorandum includes the sentence in the middle of the third paragraph, "He further stated he did not want any of the logs sent over to Dr. Kissinger's office, but that he would read it here and have it kept here."

Did you give instructions to Colonel Haig to make those arrangements?

A I had always made clear that I did not want to read any logs, and I did not want to be involved in the operational matters. If the FBI believed that they had information that [67] was relevant to my execution of my duties as National Security Advisor, I felt I had an obligation to have it brought to my attention. But I had no interest in the raw material from which they derived it. And I consistently took the position that I didn't want to see it.

So this is quite compatible with my instructions to General Haig.

Q The next exhibit is Plaintiff's N, which is a letter from Mr. Sullivan to Mr. Hoover.

(The document referred to was marked for identification as Plaintiff's Exhibit N)

Now, in your answers to interrogatories, you said you had no recollection of visiting Mr. Sullivan's office, and you cannot confirm or deny the accuracy of the report.

I want to ask whether you had checked your appointment books and telephone records to see if they confirm or dispute Mr. Sullivan's assertion of a meeting between you and him at 11:45 on May 20th.

MR. KEUCH: Mr. Slocombe, would you have the question that that is—.

MR. SLOCOMBE: Sure, it is on page 37.

MR. KEUCH: Thank you.

MR. SLOCOMBE: 46.

[68] THE WITNESS: I have not personally checked my appointment book. Prior to my testimony, I had my appointment books checked, and they show no such meeting. But in 1969 my records were not kept in any very systematic way until about October of that year.

So I would have to say that the records of my office are inconclusive as to this meeting.

BY MR. SLOCOMBE:

Q Turning back to the names that you sent over, why did you feel obliged to send over Morton Halperin's name, if Mr. Hoover had already raised that as a name and had already authority to institute a wiretap?

A Because I also included him among those who had access—because of the access he had to the information.

Q Did he have operational responsibilities—not operational responsibilities—staff responsibilities for you for the Cambodian bombing?

A No, but Mr. Halperin was either the only or—I think there was one other member on the staff—who had responsibility that cut across various of the specialties. In addition, I had very high regard for Mr. Halperin's abilities, and, therefore, as a general rule, I brought him in on most critical decisions that had to be taken, even thought

none of them [69] fell into his specific operational field of responsibility, which cut across all of the fields.

Q When General Haig sent over the list, did you give him the names and discuss them with him, or did you give him criteria and instruct him to draw up the list?

A Well, I am sure I gave him the four names from the Oval Office meeting.

Q Excuse me, on May 9th or prior to that?

A That I quite frankly do not remember.

Q Go on, I am sorry.

A And I certainly discussed with him what additional names having access to the information and/or having access to the information as part of this should be included on the list.

Q How do you explain the addition of a new name that was not on the April 25th list and the omission of a name that was on the list?

A The omission is explained by the fact that that individual had no governmental responsibilities in any way related to this investigation, or no governmental responsibilities. The addition—he had no governmental responsibilities. The addition of the name was that it was an individual in a peculiar position to know about not only the facts but all the [70] details of the raids.

Q Turning back to the time after the tap was in effect, do you recall ever reading any of the logs—now, by logs I don't mean summary letters addressed to you, but the logs—

A I have no recollection reading any logs, and I doubt—I am practically certain that I never read any.

Q Turning now to what will be our Exhibit O, which is talking points which were prepared for you by General Haig, you say in your answers that you assume that you followed them.

(The document referred to was marked for identification as Plaintiff's Exhibit O)

That is question 48 at the bottom of page 37.

MR. KEUCH: Thank you.

THE WITNESS: That would be logical.

BY MR. SLOCOMBE:

Q Note that the last paragraph, paragraph No. 5, includes a discussion of how long the taps were to continue.

Does your assumption extend to assuming that you had a conversation along those lines with Hoover, that is, in which one of the issues was how long the tap on Mr. [71] Halperin would continue?

A I quite frankly do not remember the conversation that precisely.

Q Do you have any reason to believe that you would not have had—that you would not have had a conversation in those terms with respect to that issue?

A I just have no way of remembering it one way or the other.

Q In the same paragraph, General Haig makes a recommendation as to how long the tap on Halperin should go on. "It should be kept on for at least another two weeks, so that a pattern of innocence can be firmly established."

Was the making of such a recommendation and the suggestion to you that you make it to Hoover within your understanding of your role and the NSC staff's role with respect to the taps?

A No, not as a rule.

Q You did not feel that you could advise on how long the taps should continue?

A I never made a recommendation on how long a tap should continue.

Q You have no recollection of making the statements suggested by—

[72] A Can I clarify the previous question? I thought your previous question was referred to this bracketed part.

Q It does.

A I mean the question which I said I have no way of knowing one way or the other. That I thought referred to the bracketed part.

Q It does.

A All right.

Q Do you have a specific recollection of using any other part of this?

A No. I just wanted to make sure that we all knew what we were talking about.

I think this talking point is useful to indicate a mind set. It is not reliable as to any point that was in fact raised.

Q Does that mind set include the assumption that it would be appropriate for you to make a recommendation as to the duration of the taps?

A I do not recall, and I do not believe I did ever make a recommendation as to the duration of the tap—for a variety of reasons, including the fact that I only got those letters—I never had a complete list of everyone who was being tapped. I only got the letters on those that the FBI [73] believed they had national security information.

And, secondly, after May 1970, I did not get any letters, and therefore I would have had no criteria whatever from which to make a determination.

Q In your answer on page 38, question 48, you say "They,"—that is, the summary letters—"were reviewed by General Haig who would call such of them to my attention as he believed appropriate. Occasionally he would put those he considered significant in my in-basket, and those that arrived there may or may not have been seen by me."

Did you ever give General Haig any instructions as to what it was appropriate to give you or what was significant?

A We had the understanding that those cases that seemed to him to involve security information of some significance should certainly be brought to my attention. One difficulty was that these letters, with our criteria of what constituted a piece of security information, didn't coincide

most of the time with that of the FBI, and therefore very rarely did anything come in that was very signficant.

Q How did the concept of what was security information differ?

A I would think that the FBI would consider comments [74] that were critical of our policy as security information, while I would have considered primarily the use of classified information as constituting security information.

Q Did you ever suggest to anybody, to the FBI or to somebody to convey to the FBI, that the FBI should use different criteria?

A My role in this program was substantially passive. I believe that the FBI had its own methods of conducting investigations, and I received their information. During the course of 1970, I began to feel that there was nothing going on that was really relevant to my duties, and I therefore asked the President repeatedly to separate me from this program, which he finally did in May 1970.

Q I take it, then, that the specific answer to my question is no, that you did not ever convey—

A I did not feel that was my responsibility.

Q And you didn't do it.

A No.

Q The answer to question 51 on page 40, you say "I discussed some of the letters with General Haig, or he would brief me concerning them. I do not recall any discussion with President Nixon concerning particular letters, although there were such discussions."

[75] Does the statement that "there were such discussions" mean that you participated in discussions with President Nixon about particular letters and can't recall the specifics, or that there were discussions that you didn't participate in? Or something else.

A My recollection is that there were occasional—very rarely—discussions based on the letters that came to him from his sources.

Q Do you remember whether any of the discussions referred to in your answer to question 51 related to Morton Halperin?

A I don't remember, but since I was somewhat more sensitized to Mr. Halperin, I don't think they did.

Q One point. Question 61, which appears at the bottom of page 42 and then continues at the top of 43, erroneously refers in the middle of the question—"Did you direct the FBI to terminate the surveillance of Mr. Halperin? Did you in fact on or about September 20th, 1969, direct the FBI to continue the surveillance of Mr. Halperin and Henry Brandon, while discontinuing other surveillances then in effect?"

The reference to September 20th, 1969, should be to June 20th, 1969—that is, based on this document, which is Plaintiff's Exhibit N—P, I am sorry.

[76] (The document referred to was marked for identification as Plaintiff's Exhibit P)

A Yes.

Q My question is whether, looking at this document and having the correct date on it, refreshes your recollection as to whether—

A It says June 20th.

Q The answer, September 20th, is simply a mistake, a typographical error—it should be June 20th. The question is, did you, on or about June 20th, 1969, direct the FBI to continue the surveillance of Mr. Halperin and another person, while discontinuing other surveillances then in effect?

A I have no recollection of this. And the question of continuing surveillance did not appear to me to be in the purview of my office.

Q Do you want to turn, then, to the September 15th, 1969, memorandum, which will be Q, which is a memorandum from Mr. Sullivan to Mr. DeLoach, and I note your answer in the interrogatories that you cannot explain the memorandum—"It is not based on any authorization or instructions given by me."

[77] (The document referred to was marked for identification as Plaintiff's Exhibit Q)

Is it conceivable that Haig would have told Sullivan that you wanted certain wiretaps continued without authority from you to make that statement?

A That, to all practical purposes, is inconceivable to me.

Q Exhibit R is an excerpt from Mr. Mitchell's deposition in which he was asked the question "Does the description in that paragraph"—that is, the September 15 memorandum, Exhibit Q—"of who controlled the continuance of these wiretaps correspond to your understanding at that time, that is, that it was up to Dr. Kissinger to decide when the wiretaps came off?

Answer, page 59—"Yes, I think I would have to answer the question, the way you put it, yes, Dr. Kissinger, having initiated the taps, that it would be his determination as to when they came off, yes."

(The document referred to was marked for identification as Plaintiff's Exhibit R)

Does that correspond to your understanding of your [78] role with respect to the continuation of the taps?

A No. It is also incompatible with the facts in the sense that I now know that there were people being tapped about whom no reports were ever sent to my office. And, secondly, no reports were sent to my office after May 1970. So there was no possible way I could discontinue taps on the basis of any evidence I had.

Q Do I understand your statement about the other taps to be that there were taps where you had sent over names—

A There were taps where I had sent over names about which no reports were sent to my office.

Q Therefore, your—

MR. KEUCH: Could we have a pause just a moment?

(Brief sub rosa conference between the witness and Mr. Keuch)

I was just making sure that the answer was accurately stated.

BY MR. SLOCOMBE:

Q But as to the ones where you were getting reports, which was the case in September of 1969, on Mr. Halperin, did you understand—was your understanding of your role and your responsibility consistent with what Mr. Mitchell said?

A No.

[79] Q Staying in the period of August and September 1969, did you have conversations with Morton Halperin before he left the staff?

A Extensively.

Q And what was the gist of those conversations?

A I thought that Mr. Halperin had done an extraordinary job in writing conceptual pieces about the choices we faced and the perspectives with which we should pursue foreign policy, and I was most anxious to keep Mr. Halperin on the staff. There were major problems of finding a role for him that did not bring him into constant conflict with various other strong-minded individuals on the staff.

And, in the nature of things, his assignment cut across many jurisdictions.

Mr. Halperin thought that the way to avoid this was to make him Deputy. That, for a variety of reasons, did not seem possible to me, so I had extensive conversations with him to see whether I could find a role for him that would enable him to say, short of what he had recommended to me.

Q Did anything which you had learned as a result of the information you were receiving from the wiretaps make you doubt that you wanted him to remain a member of the staff?

A I was aware that keeping him on the staff would [80] present a continuing presentational problem to me. But I

was prepared to take that risk, and I had no information that would make me—on security grounds—make me change my mind about keeping him.

Q So at the time you were discussing his remaining on the staff in the late summer of 1969, at a time when the tap had been on for some months, and you had been receiving reports of it, you had no doubts that it was consistent with maintaining security of information that he should remain on the staff?

A That was my judgment.

Q The disputes about his remaining on the staff had to do with wholly unrelated matters—personality and role?

A The disputes within the staff had to do entirely with personality and role.

Q And the presentational disputes that you referred to had to do with the judgment of other people?

A They were the ones that I had experienced earlier in the year.

Q Just to make it entirely clear on the record, Mr. Halperin did not leave the staff because of anything that came out of a tap?

A That is correct.

[81] Q Our next exhibit is an excerpt from Richard Nixon's deposition, which is Exhibit S.

(The document referred to was marked for identification as Plaintiff's Exhibit S)

On page 87 and 88 of that deposition, beginning on line 9 of page 87, "Needless to say, when Dr.—if at any time Dr. Kissinger, after having evaluated the taps or other surveillance material over a period of time, or because of the problem of leaks having receded in importance, Dr. Kissinger had then reached a conclusion that they were no longer necessary, it would be his obligation to furnish that information to Mr. Hoover, and Mr. Hoover would then take them off.

"I should point out, however, that this is consistent with the way that I understood it and directed that the pro-

gram be set up, that Dr. Kissinger should furnish the names and Mr. Hoover would institute the surveillances and furnish the fruits or results of the surveillances to Dr. Kissinger's office, and that they would be evaluated, and Mr. Hoover, in addition, of course, would recommend additional names if he felt it was necessary or advisable because of his own investigation.

"I think that Mr. Hoover, under these circumstances, [82] therefore, would give very great weight to Dr. Kissinger's recommendation that a tap be removed, just as he would give very great weight to a recommendation that a surveillance be instituted.

"It does not indicate, in my opinion, that Mr. Hoover was simply acting as Dr. Kissinger's agent, because, in the final analysis, the surveillances had to be approved by the Attorney General, and it would be therefore a combined judgment, with that final decision being made by the Attorney General.

"It was Hoover who removed the taps—I mean, they would discontinue the surveillances and issue the order that they be discontinued—rather than Dr. Kissinger."

That presents a somewhat different version of your role, and I ask whether that conforms to your understanding of your role.

A With respect to the institution of the taps, it presents no different picture of the role. With respect to—

Q I meant different from Mr. Mitchell's.

A Different from Mr. Mitchell's. It coincides with my perception with respect to the initiation of the taps. With respect to the termination of the taps, it was never my [83] perception that I had any responsibility for the termination of the taps, since, as I have explained, my relationship to the program was primarily as a consumer, or a passive one. And, moreover, I simply did not have the information, after a certain point, to recommend termination, since I didn't even know who was being tapped.

Q But at least through May of 1970, with respect to Mr. Halperin, and to some extent thereafter, from infor-

mation from Mr. Haldeman and General Haig, you knew something of what was coming out of Mr. Halperin's tap.

A I knew next to nothing after May 1970.

Q Let's limit the question, then, for a moment, to prior to that.

A But I would say I knew nothing after May 1970. Before then, it is conceivable that this is something that fell between the cracks. It was never my perception that I had any responsibility for termination.

Q Did you have a perception as to whose responsibility it was to terminate the taps?

A It was my perception that Mr. Hoover would make this determination on the basis of his investigative experience.

Q Did you understand that you had an obligation to evaluate what was being produced by the taps, insofar as you [84] knew?

A No, and I never did.

Q But you did form a conclusion that the criterion that the FBI was applying were [sic] evidently different from what seemed to you the appropriate criterion?

A I formed the conclusion that most of the letters we received did not include material that seemed to me to jeopardize the classified information that I had responsibility for. And in that sense our criteria were different.

Q Did it ever occur to you that they included information which it was inappropriate to be obtaining by means of a wiretap justified on national security grounds?

A The letters that I received were on the borderline, and I could see how people with police but not national security experience might construe them as national security information.

Q Did you have any sense that if you were receiving information that was on the borderline and the tap had been on for some time, it was appropriate to see if it could be discontinued?

A If this program had been my principal responsibility, if I had paid great attention to it, that might well have occurred to me. As it was, I chose the role of asking the [85] President to dissociate me from it, so that people who were in a better position to evaluate its significance and could do something about it would receive the material.

Q When Mr. Halperin left the staff in September of 1969, did any question arise in your mind as to whether it was appropriate to continue the tap after he had left the NSC?

A You have to remember that these taps have assumed an all-consuming importance, to some people at least. At that time, to me they were an occasional letter that wandered across my desk among hundreds of documents, and that, as far as I was concerned, I would glance at the letter to judge whether there was anything significant in it and throw it into my out-basket.

So the answer to your question is, I did not address the question.

Q Well, when you glanced at letters after September of 1969 relating to Morton Halperin, did it occur to you that it was no longer appropriate to have a wiretap on him after he had left the staff?

MR. KEUCH: I think I would have to ask that that be a two-part question. I think you have got to establish first that there were letters that Dr. Kissinger remembers on Mr. [86] Halperin after that period.

BY MR. SLOCOMBE:

Q Were you aware from any source, after September 1969, that the tap was still in effect on the Halperins' home telephone?

A It is probable that I was, but I have no precise recollection of it. How many letters I saw, if any, that I would not remember too well.

Q On the basis of that answer, then—on those occasions when you became aware that the tap was still on, did it occur to you?

A I had the perception that the problem of security was primarily within the province of the FBI, and that it was my primary responsibility to act on information produced by the FBI. Mr. Halperin was still a consultant, he had had access to a broad range of extremely sensitive information, and insofar as I thought about the problem at all I would have thought about it in those categories.

Q You have, I take it, reviewed at various times the full file of summary letters relating to Mr. Halperin?

A Yes, but not for quite a while now.

Q I don't have prepared multiple copies of the exhibit, but I show you a letter dated October 24, 1969. This is [87] Plaintiff's Exhibit T.

(The document referred to was marked for identification as Plaintiff's Exhibit T)

And I call your attention to the initials in the upper righthand corner. I take it those are your initials? That's the format of your initials that you use?

A I don't want to make an issue of this. They don't look to me like mine. They look to me like a staff member having put them on. My initials are somewhat bolder. Let me read the letter.

And I want to make clear that the fact that there is no "HK" on the letter, or an ambiguous "HK," does not mean I didn't see it. The way I would do it is like this, and that would be conclusive. You showed me an earlier document which clearly had been read by me. This, I would think, is not my mark, but that does not mean that I did not see the letter, because I could have just glanced at it and thrown it in my out-basket. Now let me read it.

(Paper with witness's initials was marked for identification as Plaintiff's Exhibit U)

I just have no recollection of this letter. That [88] doesn't mean I didn't read it at the time. Nor does it mean that I did. I just have no recollection.

Q Did you form a conclusion as to whether the information that was being obtained from the tap was compatible and consistent with its original purpose?

A I thought it was on the borderline.

Q In a press conference which you gave on May 12, 1973, which will be Plaintiff's Exhibit V—

A May I see it?

(The document referred to was marked for identification as Plaintiff's Exhibit V)

Q Sure. At the bottom of the second page, which is page 7 of the transcript—"I would like to add, in fairness to the individual concerned, that I never received any information that cast doubt on his loyalty and discretion, and that the individual concerned left my staff for reasons that were wholly unconnected with any security investigations that may have been conducted. That is all I will say on that subject."

I take it that is still your view?

A I volunteered this information in order to be helpful to a former associate, and it is still my view.

[89] Q On page 36 of your answers in response to our question 45, you said that after May of 1970, when the summary letters were no longer being sent directly to you, "Mr. Sullivan, I understand, would call up General Haig if he had information of sufficient gravity. It is possible that General Haig informed me of such calls on one or two occasions."

Do you recall whether any of those occasions related to Morton Halperin?

A I remember only one occasion, and that did not relate to Morton Halperin. And I don't recall any that related to Morton Halperin.

Q In the previous paragraph it says "After that transfer occurred, although I do not recall with particularity any conversations between Mr. Haldeman and myself regarding the wiretap program, he may occasionally have brought to my attention matters which he considered relevant to the NSC staff."

Do you recall whether any of those matters related to Morton Halperin?

A I am certain they did not.

Q Who, to your knowledge, knew of the wiretaps other than the defendants in this case and the FBI people who were directly involved in the operation of the taps? In other words, [90] who else on the White House staff?

Let's begin with who on your staff knew it.

A On my staff, the people who organizationally knew about it were General Haig. I would find it impossible to believe that the people in my outer office—my office was set up so that the adjoining office had a desk for General Haig and a desk for another assistant, who was first Mr. Eagleburger and then Mr. Lake.

I have no way of knowing whether they knew about it, but given the flow of papers in and out of my office, it would have required a heroic management effort for them not to see these letters come through.

And then my secretary probably knew. Outside of that, I don't think anybody in my office knew.

Q Do you know whether David Young knew?

A David Young. It would depend on the time he was on my—

Q He was there at least from some time mid-1969 or early 1970 through the balance of that year, which includes the period of time when the Halperin wiretap was in effect.

A He might have known.

Q You never told him?

A I don't remember that I ever told him. He was [91] from January 1970 to January '71, David Young, my appointment secretary. Did he know? He was not physically located—when my office was in the basement, my appointment secretary was not located in the same proximity as he later was. And therefore I am not sure that David Young would have known about it.

Q Did Nelson Rockefeller know, as far as you know?

A Certainly not.

Q Did Richard Coyne, who was connected with the President's Foreign Intelligence Advisory Board?

A Certainly not from me. I barely know him. Nelson Rockefeller might have learned about it after the event.

Q After—

A I mean, after this whole story became public. Well, I mean, certainly.

Q Everybody knew by then, but prior—

A He did not learn from me while the taps were going on.

Q On page 9 of your answers, the answer to question 8, you state "To refresh my recollection in answering questions 1 through 7B, I have consulted my testimony on the subject of wiretapping on several occasions before the Senate Foreign Relations Committee, and documents furnished to me in connection with that testimony."

[92] What are those documents?

A The same documents you have been showing me.

Q All of those documents have been made available to us that you consulted in connection with preparation, other than those which relate to other people?

A I will have to ask my lawyers.

MR. KEUCH: Yes, I will state for the record that we have been working with the Secretary's staff trying to exhaust every document that he was using, and have tried to comply as fully as we can within the range of human perfection.

BY MR. SLOCOMBE:

Q Does the appointment book which you refer to—I think it is the very last answer—71A on page 46, next-to-the-last answer—that appointment book presumably covers April 25, 1969.

A Well, I have explained to you that between—from January until October, my records were very sporadic, and cover no internal appointments at all. They only covered people who came in—or substantially people who came in from the outside to see me.

From October 1970 on, we kept a detailed log that would account for practically all of my day. And, therefore, [93] for that precise period, my own records are very inconclusive.

Q I would still request that the April 25th, 1969, appointment book be made available to us under the same rules as the others have, that is, with everybody blocked out except the parties and Mr. Hoover.

MR. KEUCH: If we can find any such document for that date, we will supply it.

MR. SLOCOMBE: Our next exhibit is Plaintiff's W.

(The document referred to was marked for identification as Plaintiff's Exhibit W)

BY MR. SLOCOMBE:

Q I take it that in the period that we are talking about, that is, January 1969 through February of 1971, you did not—did you cause any recordings or monitoring to be made of your telephone conversations that produced a written record?

A I don't remember—the reason taping was instituted of telephone conversations—I don't remember when it was, that it was instituted. It was a technical device, because too much of the time of the secretaries during the day was consumed in listening to the conversations. The tapes were then [94] transcribed in the evening and destroyed that same evening. No tapes were ever kept.

Q You say in your answers that they were monitored by personal secretaries and records prepared.

A I would suppose during that period that was the case.

Q Someone just sat and listened.

A Someone sat and listened and took shorthand.

Q Have you searched yourself or caused a search to be made through those monitored records for references to the wiretap program, and specifically the wiretap on Morton Halperin?

A Yes, and I haven't found anything.

Q Who conducted that search?

A Mr. Eagleburger. I have never looked at these records.

Q Mr. Eagleburger actually read through the transcripts of the telephone conversations?

A To the best of my knowledge, for the questions that you asked in the interrogatories.

Q Did he also read through the transcripts to see if there was any information in those transcripts relating to matters relevant to this case?

[95] A I am not sure, we would have to ask him.

Q I want to request that that be done, because I think that that is a matter which is within the scope of our Rule 34 request of records relating, a search of records relating to—

MR. KEUCH: We will consider that request, Mr. Slocombe, and respond to you as soon as we can.

BY MR. SLOCOMBE:

Q Our final exhibit is Plaintiff's W, which is an article from the New Republic by John Osborne, and I call your attention to the paragraph on—

A What's the date?

Q January—February 14, 1976. I call your attention to page 9, the righthand column, about halfway down the continuation paragraph, where it says "It was in private communication with journalists that Kissinger got himself into trouble and generated a doubt, usually reflected rather than explicitly stated in print and in broadcast, about his believability. In two examples drawn from my experience. . ."

A Wait a minute, where are you now?

Q Page 9, the righthand paragraph, about the middle of the first paragraph, at the top of the page.

MR. KEUCH: We have it.

[96] BY MR. SLOCOMBE:

Q To continue, "In two examples drawn from my experience, he at one point came close to passing the whole buck to his faithful assistant, General Haig, and in another instance suggested that he had tolerated—he never, to my knowledge, said he initiated—the tap on Morton Halperin in the hopes that it might convince Bob Haldeman and John Ehrlichman and other White House doubters that Halperin wasn't the security risk that they said they thought he was."

Did you ever have a conversation in those terms with John Osborne or anyone else?

A I called Mr. Osborne, in fact, after this article appeared, and pointed out to him that this must have been based on a misunderstanding. I, of course, hoped, for the reasons which I have described, that the wiretap would exonerate Mr. Halperin, but the initiation of the wiretap was not as a device in order to exonerate Mr. Halperin.

Q And, therefore, did you have conversations along those lines with Mr. Osborne, which you think he misinterpreted?

A I have no recollection of such conversations, and I called him up as soon as I read that article to point out to him that it must have been based on a misunderstanding. I am [97] sure he can confirm this.

Q So the views attributed to you in the article are not in fact your views?

A No, the views that others have given.

Q Referring to your statement about exoneration, is it your judgment that the taps did in fact produce any information suggesting that Mr. Halperin was responsible for any of the leaks which were the subject of concern in early 1969? Or any other leak?

A No.

MR. SLOCOMBE: I have no other questions. Wait, excuse me.

BY MR. SLOCOMBE:

Q Just for the record, how did you become aware that the tap was terminated in February 1971. I mean, it was terminated in Feburary 1971—how did you become aware of that?

A I am actually not sure that I was ever formally notified that the taps were terminated. At some later period I was told that all tapping in the government had been turned off—of this kind.

But I don't remember when that was.

Q Did you and General Haig have any conversation in February of 1971 about terminating the Halperin tap?

[98] A No.

Q Did you subsequently, in any context, learn of any use that was made of the information which had been developed from the wiretap? And I refer specifically to the investigation of the Pentagon papers leak.

A No.

Q Did you know that David Young had access to at least one summary letter in the course of that investigation?

A I didn't know in fact that David Young was conducting the Pentagon papers investigation, and I didn't know what material he had access to.

MR. SLOCOMBE: That's all.

MR. KEUCH: We have no questions. Any of the gentlemen for other defendants?

MR. SCHEARTZ: We have no questions.

MR. KELLERHER: No. questions.

MR. KEUCH: All right.

MR. SLOCOMBE: Thank you very much, Mr. Secretary.

(Whereupon, at 6:50 p.m., the taking of the deposition concluded.)

[99] I have read the foregoing 98 pages, which contain a correct transcript of the answers made by me to the questions therein recorded.

/s/ _____
HENRY A. KISSINGER

Subscribed and sworn to before me this ____ day of ____, 1976.

_____
Notary public in and for:

My commission expires:

CERTIFICATE OF NOTARY PUBLIC

I, Terry Barham, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me and thereafter reduced to typewriting under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

/s/ _____
TERRY BARHAM
Notary public in and for the
District of Columbia

My commission expires May 14, 1979.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1187-73

MORTON H. HALPERIN, ET AL., PLAINTIFFS,

v.

HENRY A. KISSINGER, ET AL., DEFENDANTS.

Deposition of H. R. HALDEMAN, taken on behalf of Plaintiffs at the ACLU Foundation, 633 South Shatto Place, Los Angeles, California, commencing at 10:00 a.m., Friday, January 16, 1976.

Reported by:
SALLY YERGER, CSR, # 2008
Notary Public

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[5] H. R. HALDEMAN

having been first duly sworn, was examined and testified as follows:

MR. SLOCOMBE: First of all, just for the record, this deposition is taken pursuant to Notice. We do appreciate your courtesy in moving it up a day, which I think accomodates all of our schedules.

THE WITNESS: Glad to do it.

EXAMINATION

BY MR. SLOCOMBE:

Q In the period before May 9, 1969, were you present at any discussions of wire tapping?

A Not that I recall, no.

Q Were you present at any discussions of leaks and measures to detect the source of leaks?

A I can't recall any specific discussions. But I am sure that in that period of time I was present during discussions of the problem of leaks because that was a matter of major concern to the White House and was the subject of frequent discussion.

Q The question of the use of various investigative techniques as distinguished from the problem of leaks, did that come up in the discussions at which you were present?

A Now you are still in—

Q Pre-May, 1969, the first few months of the administration.

[6] A Again, I don't recall any specific discussion at which techniques were raised. I don't have any recollection in a general sense of the discussion of techniques at that time. The reason I am hesitating is that I do have very definite recollection of discussions and instructions to me to use the techniques of lie detector tests as a process of smoking out leaks or sources of leaks. I can't tell you for sure that that took place before or after May 9.

Q But that was in 1969?

A I would think so, yes. I am sure it was. I am sure they were. There were several instances where the use of lie detectors arose.

Q Who was present at these conversations?

A Again, I can't give you a specific conversation. My recollection is that it would be the president. I don't have any specific recollection that anyone else was present in those discussions.

MR. CHRISTENBURY: Excuse me, Mr. Slocombe. I understand your general line of questions. I think that certain background questions are both necessary and proper.

MR. SLOCOMBE: If I could ask my next question, I may anticipate your objection.

MR. CHRISTENBURY: Very well.

Q BY MR. SLOCOMBE: Do you remember whether those conversations in which there was a discussion of lie detectors or of polygraphs, did they relate to leaks in the early months of the administration out of the National Security Council machinery?

[7] MR. CHRISTENBURY: I don't believe that that fully satisfies my problem. That is simply that this is a suit involving wire tapping and that technique only. I am not sure I perceive the relevancy of the other techniques that may or may not have been considered or even used.

MR. SLOCOMBE: May I ask? On the whole, I agree with you. I am trying to get the record clear on this issue.

Q In those discussions in which polygraphing came up, do you have any recollection of wire tapping also being discussed?

MR. CHRISTENBURY: Fine. You may answer.

THE WITNESS: No.

Q BY MR. SLOCOMBE: When did you first hear of Morton Halperin?

A With no disrespect, it is an unpleasant question. With no disrespect, I can't really tell you. I am sure I

must have heard his name along with names of other people that were close associates of Dr. Kissinger's in the early days of the administration.

But as I say, with all due respect, it was not a name that meant anything to me. Dr. Halperin's distinction is in a field that is not my field.

Q Do you have any specific recollections of any conversations in the early days of the administration, including indeed, the period just before the inauguration in January of 1969, about the hiring of Dr. Halperin?

A I have no recollection specifically about the hiring of Dr. Halperin. There were of course, extensive [8] discussions about the process of building the staff in the White House and of individuals. It is quite possible that Mr. Halperin's name arose in those discussions. But, it just didn't mean anything to me in any significant way. I don't have any recollection of that name as contrasted to others.

Q What was the general character of those discussions?

MR. CHRISTENBURY: Again, excuse me. I have problems. Having had no recollection of having discussions about Dr. Halperin, I don't know that discussions relating to others or general discussions would be relevant.

MR. SLOCOMBE: Mr. Haldeman indicated he was present at discussions of filling Dr. Kissinger's staff, at which it was possible.

MR. CHRISTENBURY: I don't know he said Dr. Kissinger's staff. I think he referred to employment generally.

Q BY MR. SLOCOMBE: Did those discussions include discussions of the hiring of people for Dr. Kissinger's staff?

A At that time I am sure they did, yes.

MR. SLOCOMBE: With that clarification, I think we are talking about some discussions at which people to be hired for Dr. Kissinger's staff were discussed. These discussions took place. I think I would like to probe more to find out what the character of those discussions were. This

among other things, might help refresh Mr. Haldeman's recollection as to what happened in those meetings.

MR. CHRISTENBURY: I would limit it in that respect. I am troubled by the line of questioning. But we do want [9] Mr. Haldeman to be as responsive as he can.

I think that certainly any discussions that would identify other persons by name are totally inappropriate. We will let him respond just in a very narrow sense to your questions.

MR. SLOCOMBE: I have no interest in any other names in this part of the question.

Q The question essentially is, in those parts of the conversation which related to Dr. Kissinger's staff, what was the general tenor of that discussion?

A That is very hard to characterize because you are talking about a period where there were constant, ongoing discussions of all the matters of putting a White House staff together and forming a new government, in effect.

We were all just starting out. The range of discussions covered every possible aspect of the recruitment and evaluation and clearance and hiring process.

Q Did you ever personally—I assume you know the answer. Did you ever personally recommend against the hiring of Dr. Halperin?

A No. I don't believe so. Certainly not specifically by name because as I said, I didn't know the name.

Q Were you present at any discussions at which anybody recommend against the hiring of Dr. Halperin?

A Not that I recall, no.

Q Were you ever present at a discussion at which Dr. Kissinger said that Dr. Halperin was a holdover from the prior administration that he would like to get rid of?

[10] A I don't recall that. I do recall the general subject as one of the matters under discussion, of the question of retaining or rehiring holdovers from the previous administration. That was one matter under consideration in the whole range of matters regarding employment.

Q What was the gist of that discussion?

A Just the question as to viability and that was not limited to Dr. Kissinger's staff. This covered the hiring process all the way across the board.

Q But this was a general discussion of how many people on the staff he wanted to have who had been working for the previous administration?

A No. You are going beyond what I said. I am not sure what you said because I stepped in too fast to interrupt you.

MR. CHRISTENBURY: Let me interpose a troubling aspect of this that I perceive. That is again, we want you to get the background that is necessary. But the general discussions as to hiring—the record, as you certainly are aware of as to why the electronic surveillance was utilized and the sum and total of the testimony did not go to the question of his prior activities or prior representation, other than in his personnel file.

MR. SLOCOMBE: We have not yet taken Dr. Kissinger's oral deposition. But he did say in Salzburg that all of his closest associates recommended against hiring Dr. Halperin. We have yet to find anyone who did, except Senator Goldwater. But I think we are entitled to find out who those close associates [11] were. If Mr. Haldeman was not one, that is fine. I think we have established that. So, I am prepared to move on to something else.

MR. CHRISTENBURY: Fine, I am sorry.

Q BY MR. SLOCOMBE: Did you recommend to Dr. Kissinger not to hire holdovers or Democrats or liberals or people who worked for the Kennedy/Johnson Administration in general, as opposed to a specific recommendation against Dr. Halperin?

MR. CHRISTENBURY: I would instruct him not to answer. I simply don't see the relevancy. I think that any recommendation that he had as to Dr. Halperin, you have probed that.

Q BY MR. SLOCOMBE: If I understand your prior answers then, you were not present at any discussions

prior to May 9, 1969 at which wire tapping for the purpose of detecting the sources of leaks was discussed?

A Not that I recall, no.

Q Just specifically, were you present at any meeting with J. Edgar Hoover at which subjects in the area of detecting leaks were discussed?

A Again in that time, I can't pin that down. I am sure that at conversations at some times at which Director Hoover was present, the discussion did cover the subject of leaks. But I can't confirm that. That would have been before the May date.

Q With Attorney General Mitchell?

A The same.

[12] Q With Dr. Kissinger?

A Let's see—what was the nature of your question? Give me the specific question regarding Dr. Kissinger.

Q Were you present at any meetings or discussions of any kind or encounter including telephone conversations with Dr. Kissinger at which the general subject of detecting leaks from the national security information was discussed in this period?

A I think probably so.

Q Can you give us your best recollection of those discussions?

A No, other than the general sense I have already given you. That was a concern. So I believe there was discussion about the problem of how to deal with it.

Q But you have no specific recollection of the substance of this?

A No I don't.

Q Do you have any recollection of a meeting which is alleged to have taken place April 25, 1969 among J. Edgar Hoover, Attorney General Mitchell and President Nixon which began in the Oval Office and into which Mr. Kissinger was allegedly summoned? Then Hoover, Mitchell and the President went to Camp David. Do you have any recollection of such a meeting?

A That is really not a meeting, but a series of meetings in a sense.

I have no recollection of the Oval Office [13] meeting. If that is a weekend, that I do recall.

In the first place if that is a weekend, if it is a Friday—

Q Yes, it appears to be a Friday.

A I suspect that that is the weekend that the President had Director Hoover and Clyde Tolson and the Attorney General as guests at Camp David overnight. If that is the case, I was with them on the trip to Camp David. We went up by helicopter from the White House and had dinner at Camp David and spent the night. I think we spent the weekend. I think however that Tolson and the others went back down on Saturday.

Q And Mitchell was present on the helicopter ride?

A That is my recollection. If this is the weekend I am thinking of and I am not sure of it. I remember a weekend at Camp David in the early days of the administration when Hoover, Tolson and Mitchell were the President's guests at Camp David. I remember it individually because a very amusing incident took place during the showing of a movie.

Q In any of the conversations in which you participated or overheard, was there any discussion of wire tapping for the purpose of detecting leaks?

A Not that I recall at all. I have no recollection of any substantive discussion during that weekend and that is the time I am focusing on, the weekend when we were at Camp David.

Q I take it that if there was a meeting among the people who later went up to Camp David and Dr. Kissinger in the Oval Office before that, you weren't present at it?

[14] A I have no recollection of being present at such a meeting and don't believe I was.

Q Would the White House logs for that period show clearly who was with the President in the Oval Office?

A Within the limits of human accuracy to maintain the logs, yes. I mean purportedly, they would hopefully show it.

Q The system was supposed to work that if Dr. Kissinger were summoned into a meeting that was already in progress, someone would make a note that he had gone in?

A Right, also if I were. Actually, my going in and out of meetings could be less accurately recorded than Dr. Kissinger. If Dr. Kissinger were there, it is most likely that that would show in the log.

Q Do you recall an interview that you gave—let me go back one step. Is it possible that Mitchell was not on the helicopter ride to Camp David, but went up separately and met the President and you and Hoover and Tolson there? Do you remember him going on the helicopter?

A No, I don't remember him being on the helicopter. I should backtrack. I can't confirm to you—I was going on the assumption and I can't confirm it that any of us went up by helicopter. That was the normal means of going to Camp David. Now that you have raised that specific question, my recollection is that Hoover and Tolson came up by car.

Q Hoover and Tolson went up by car?

A Separately, not with the President. Hoover went up in his own car.

[15] Q From the White House?

A You are trying to tie my recollection of Camp David in with my nonrecollection of a meeting in the Oval Office. I can't do that.

Q Would the White House records show who was with the President when he was in a helicopter or a car?

A Yes, they should.

Q So the White House records should show how the President got there and who was with him?

A Right. Specifically, the helicopter log record would be highly accurate. It would be highly unlikely that it would not be complete.

Q Did you in this period form a judgment as to the legality of wire taps for the purposes of detecting national security leaks?

MR. CHRISTENBURY: Mr. Slocombe, I would have to object at this point. I don't think the witness has testified that he had any recollection of any meetings where the subject of wire tapping was discussed.

MR. SLOCOMBE: I will rephrase the question until the first time he indicated an awareness of wire tapping.

MR. CHRISTENBURY: We can focus on it at that point.

Q BY MR. SLOCOMBE: When did you first become aware that a wire tap had in fact, been installed on Dr. Halperin's telephone?

A I have not the vaguest idea.

Q Did you become aware of a program of wire taps for that purpose which was allegedly authorized by the [16] President in the period of late April and early May of 1969?

A I can't put—to use John Dean's word—specificity of dates on that. But I did somewhere in that period become aware that there was in effect a program of wire tapping certain individuals in connection with trying to detect leak sources, yes.

Q You understood the purpose of the tap was to detect the sources of leaks of national security information?

A Right.

Q Did you form an opinion as to the legality of that program?

A No. I was not called upon to form an opinion. I am not a lawyer. I didn't make the practice of forming opinions of the legality of any ongoing activity.

Q Did you have any understanding of the procedures to be followed in that wire tapping? For example, were you aware that the regular FBI procedures for such things as records on renewal requests were not to be followed?

A The tense of your question presumes a knowledge of the program before it was put in, which I don't believe I have. So my answer would be no.

Q When you learned the program was ongoing, did you learn anything about the procedures that were going to be used in the program that was in operation?

A Your tense is still wrong. You say "were going to be used." When I learned about it, they were being used.

Q I stand corrected.

A And the answer would still be no in the sense [17] that I had no involvement in the procedures.

Q But did you know anything about them?

A I don't think so. I only knew that there were taps being made on certain individuals for this purpose.

Q Did you inform Mr. Ehrlichman of the existence of this program?

A Not that I recall.

Q Do you remember any discussions in this general time period with Mr. Ehrlichman about wire taps?

A Only in a very general sense that my general recollection now is that Ehrlichman was aware that this program was under way, as I was.

I don't know that I told him or he told me or that we both heard from someone else. I can't pinpoint a source.

Q Do you recall any discussion of how long the tap program was to continue, how long any individual tap was to stay on?

A No.

Q Were you aware of any instructions by the President that the tap program was to be as brief as possible?

A No.

Q Were you aware of any instructions by the President that there was to be a limitation on the overhearings in the tap as to what was relevant?

MR. CHRISTENBURY: Excuse me. What do you mean by "limitations?"

MR. SLOCOMBE: Limitations as to overhearings. That is, as to what was overheard and recorded in the course of the [18] operation of the wire taps, whether it was to be limited to what was pertinent to leaks in the detection of the sources of leaks.

MR. CHRISTENBURY: Okay.

Q BY MR. SLOCOMBE: Were you aware of any such instructions?

A No. I should generalize my answer. I was not aware of any of the procedures of instructions or restrictions or expectations of the program at all, simply of the fact of its existence.

Q Do you have any recollection of how you came to be aware of the program?

A No. I just testified—my best recollection is that it was on the occasion of some fact that had been determined by one of the taps that was brought to my attention.

Q There is testimony in the record that letters were prepared. We have the letters that were prepared and addressed to President Nixon which were delivered to Mr. Ehrlichman by General Haig. That is, that the FBI would prepare a letter addressed to the President signed by J. Edgar Hoover, which would actually be delivered to Colonel Haig. He would then take it to Mr. Ehrlichman's office and Mr. Ehrlichman or people on his staff would make a further disposition of it.

Were you ever contacted by Colonel Haig about that procedure?

A Not that I recall, no. I don't think I knew of that procedure.

Q Did your responsibilities in the White House [19] include a general control of the flow of paper?

A General control, yes.

Q What was the normal procedure with respect to letters addressed to the President from J. Edgar Hoover?

A I am not sure there was a normal procedure.

Q Is it impossible to generalize about how?

Let's go back to the more general statement. What was the general procedure with respect to letters from senior government officials addressed to the President?

A They would normally be—even then, subject to the limitation of the dangers of generalization, let me say that they would—the normal procedure was that such a letter would be directed to the White House staff, senior White House staff official responsible for the area covered in the letter. That would be done by the staff secretary.

Q Who was that?

A At that time it was probably John Brown. I can't confirm that. But I think that is right. The individual really doesn't make any difference. It is an institution. The staff secretariat was an apparatus for handling the orderly flow of paper in and out of the President's office.

Such a letter would be directed to the senior staff person responsible for that area.

Q Having been opened first by someone in the staff secretariat?

A I am not sure. I don't know whether the letters were opened to begin with. But it doesn't make any difference. It was a clerical process. They were opened at or before they [20] got to the staff secretary.

Q What was done with letters which were considered as sufficiently sensitive—I take it that there were letters that were sensitive that should not have been opened in the normal paper flow of government mail?

A Right, there were. That is why the generalization problem was difficult because it becomes even more difficult to generalize as to what happened with sensitive material because it depends on how it was identified and how it was routed.

There were a number of routes for sensitive material to reach the President and any particular sensitive item could have reached him through any one of a number of routes.

It could have gone to the staff secretary in the normal routine, but been identified on the cover as highly sensi-

tive in some way and if it clerically fell within national security's area, it would be delivered unopened to the NSC apparatus, which had its own secretariat which processed its own incoming materials.

It might have gone directly there without coming to the staff secretary. Most likely it would if it were the NSC bailiwick.

Material from Director Hoover could well have gone to the President through that route, or through the White House Counsel's office (At that time it was John Ehrlichman) or through my office directly or through Rosemary Woods' office (who was the personal secretary to the President and who [21] was a route for sensitive material to the President).

There were a number of possible routes. I have cited examples. I cannot give a definitive list. You can probably raise some other suggestions.

Q Were you normally aware of how these various routing systems worked? That is, normally would you know if letters from a cabinet officer which were regarded as sensitive, were going through one of those sensitive channels? Were you generally aware of that?

A Normally and generally are dangerous words.

Q I understand that.

A In a one-word answer, I would say yes. But I would want to qualify it. While normally or generally I would be aware of it, it was quite possible and I am sure as a matter of fact, that there were instances of such routing of which I was not aware.

Q I take it that you personally or your office did not during this period, receive any summary letters addressed to the President and signed by J. Edgar Hoover relating to Dr. Halperin's tap?

A None that I can recall.

Q Were you aware that they were being delivered to Mr. Ehrlichman?

A I don't believe so.

Q Did you have any discussion with Mr. Ehrlichman about the procedure whereby they were delivered to him or whereby a procedure would be set up?

A If there was such, I couldn't have discussed it.

[22] Q A fortiori, you did not refer the letters to him or set up the procedure and tell him that he was to be the mail box for those letters?

A If you drop the Latin prelude which I don't understand—if I don't include that in my response, I will say yes. I was not aware.

Q Since all that was true, the other follows.

You had no such conversations with Tolson, Haig or Dr. Kissinger?

A About the procedure? I don't believe so.

Q About the procedure for delivering the mails addressed to the President?

A I don't think so. Let me point out, which may be helpful in looking at this whole thing as you are trying to analyze it, you are talking about a time when the administration was in its infancy and our systems and procedures were just being developed and were just shaking down. So a lot of things that I remember as normal procedure or that you have heard about in a lot of press coverage and a lot of these things that came to be accepted as normal procedure in the later years or even later months of that year, might not well have been in place at the time that we are talking about. Now in 1969, we were developing systems and shaking them down and revising them.

Q I want to be clear that the procedure we are describing continued so far as we understand, through May of 1970. My question applies on a continuing basis up through May of 1970. You were not aware that letters were being delivered to Haig first by courier and then to Ehrlichman's [23] office addressed to the President?

A Not of that specific routing, no. I was aware that there were reports of wire tap findings coming. It was my understanding they were coming to Kissinger's office primarily.

Q This is the same state of awareness that we talked about before?

A Yes, right.

Q Did you see any of those reports prior to May of 1970?

A Yes, I think I did.

Q How many?

A I am not sure, several.

Q How did they come to you?

A Either from Dr. Kissinger or Colonel Haig.

Q Can you describe the reports which you saw?

MR. CHRISTENBURY: Excuse me. Your question may not enlist it, but to get our standing objection on the record, we wouldn't permit Mr. Haldeman to testify in general terms.

MR. SLOCOMBE: I am getting to that. I know the objection. I would like to withdraw the question. I will rephrase it.

MR. CHRISTENBURY: Very well.

Q BY MR. SLOCOMBE: Without describing the contents of any letters other than those which reported on Dr. Halperin or from his telephone, can you describe in a general way what the reports which you saw were?

A You can't or I can't differentiate between those that might have involved Mr. Halperin and those that may [24] not have.

Q That is of course our answer to Mr. Christenbury's objection.

A What I recall is a memorandum form as I recall signed by Director Hoover reporting that our sources have developed the following information and then there would be a series of reports on various items that they had come across. As I recall, it would cover different individuals.

Q What was the nature of the conversation between you and Colonel Haig or Dr. Kissinger about those reports, again not getting into the contents of the specific

report except as it related to one from this tap? Did they for example, come to you and say something about leaks?

A Yes.

Q It was shown by this?

A Yes, that would be the thrust of their having shown me, as I recall it, a particular report which would be on a leak they had found that so-and-so has been talking to so-and-so and that may well be how it was. X was talking to Y and that may well be how Y got the story or got that part of the story that was supposedly secret material that appeared in such and such a paper today or was covered in such and such a broadcast.

Q Do you remember whether any of those conversations related to Morton Halperin?

A No.

Q Do you remember that they did not relate to Morton Halperin?

[25] A No.

Q Did you form any opinion as to the legality of the use of wire taps for this prupose which by this time you were aware was—you had seen some of the reports and you had had those conversations with Haig and Kissinger.

MR. CHRISTENBURY: Excuse me. I have some problems in seeking a legal conclusion from the witness, given his prior testimony that he didn't form any legal determination as to their lawfulness and prior to that, because he was a layman.

If you want to ask him whether he had discussed with anyone or it was raised that the matters were lawful and proper and had been used in prior administrations, then these things—

MR. SLOCOMBE: If he answered that, he would have an opinion or belief. I suppose that I could ask him what was the basis of it, but I thought it would be more orderly to find out first when he had the belief and then if he answered yes, find out the basis of it.

MR. CHRISTENBURY: Very well, proceed.

MR. SLOCOMBE: I take it that the question is pending?

MR. CHRISTENBURY: Yes, we will permit the witness to answer it.

THE WITNESS: I need the question now.

Q BY MR. SLOCOMBE: Did you form an opinion—or if you have trouble with that and it may sound like a legal term—a belief as to the legality of the program which you were by this time somewhat more fully informed of?

A If by that you are asking did I go through a [26] conscious act of evaluating and come to a conclusion, the answer is no.

If you are asking did there exist in my mind a belief, I would have to say that the answer is yes. I had a belief that it was legal.

But, it was not a belief arrived at through the process of raising the question and answering it. The question never arose as to whether it was or not legal and therefore the assumption in my mind has to have been that it was legal. But, it was not a consciously arrived at assumption.

Q I would like to show you a letter dated December 29, 1969 addressed to the President on the FBI letterhead and signed by Mr. Hoover. I will ask you first whether you remember having seen that letter other than in preparation for this deposition or after the letter became a matter of public record in this case in the impeachment inquiry?

A I don't remember having seen it prior to the time of it becoming a public matter.

(Whereupon the above described document was marked as Plaintiff's Exhibit A for identification by the Reporter and is attached hereto.)

Q The second paper which I would like to show you which will be Plaintiff's Exhibit B is a handwritten memorandum on memo paper from the Summer White House, San Clemente, California, with the name at the bottom, John Ehrlichman. I will show you also a single-page handwritten memorandum on White House stationery printed

from Bob Haldeman and addressed to M which will be Plaintiff's Exhibit C and ask [27] you whether you remember having seen either of those two before, again other than in preparation for this deposition, after they became a part of the public record?

(Whereupon the two above described documents were marked as Plaintiffs' Exhibits B and C respectively and are attached hereto.)

Q BY MR. SLOCOMBE: I will ask you whether you have any recollection of receiving what Mr. Ehrlichman has identified as his handwritten memorandum?

A This gets—

Q Or his writing.

A This gets to be a problem of how you split your recollections. I have seen all of this since it has come into the public record and have looked it over. Obviously, as of this morning I recall having seen it before through that. I can't tell you that I recall this morning having seen it before it became—

Q Early in 1970?

A I don't have any recollection of that. These are a couple of literally thousands of pages of paper that passed through or probably passed through my hands during that time.

Q Turning to Exhibit C, is that your handwriting?

A Yes, I think it is.

Q Do you remember writing it?

A No.

Q Turning back to Exhibit A, this letter in appearance is similar to letters which you referred to a moment [28] ago as reports which you had seen coming out of the wire tap program?

A In general appearance, yes. My recollection is that they usually covered a series of reports, rather than what this seems to be which is one report on one individual.

Q The first sentence of Exhibit A, the Hoover letter is:

"Previous communications have set forth information which we obtained from extremely sensitive sources concerning contacts made by Morton H. Halperin."

Did you understand the phrase "extremely sensitive sources," to mean wire taps?

A I am not sure that I would have felt that it necessarily meant wire taps or that it was limited to wire taps. But I did know by this time that there was a program of wire taps under way. So, that would have been a route for what you refer to as "extremely sensitive sources." I had the impression that they had informants and other means of gathering information that could have developed this letter.

Q But that wire taps was one?

A A possible such source.

Q A possible such source. And did seeing this letter refresh your recollection as to whether in that period you knew that there was a wire tap on Morton Halperin's phone?

A I would say yes, in a sense. But qualifying that at this time, Morton Halperin was still not a meaningful name to me except—not in the personal sense, but in a generic [29] sense, that he was—in other words, the identification as a former White House staff member now employed by the Brookings Institution meant more to me than the name Morton Halperin.

Q Is it possible that it meant something to you as the name of someone who you had heard there was a tap on the phone of?

A No, because I don't think I was aware specifically of the names of the people on whom there were taps.

Q Looking at it now, looking at both Exhibit B and Exhibit C, I take it that the M referred to is Magruder in Exhibit C?

A I would agree with that because of my awareness of several other items that are normally a part of this packet of exhibits but have not yet appeared this morning.

Q I take it that it is?

A M was a designation I did use for Magruder at some times. That was my shorthand generally for Mitchell. But in this case, I think it is Magruder because of the contents of other items not yet presented.

Q Possibly also the tone of the memorandum?

A Not necessarily.

Q Do you have now or based on your recollection at the time considering both Mr. Ehrlichman's memorandum and your tone, any understanding of what you were telling Magruder to get going on?

MR. CHRISTENBURY: Excuse me, Mr. Slocombe. It seems like there are other documents. Why don't we get the whole package in front of him?

[30] MR. SLOCOMBE: Sure. I would like to mark as Exhibit D a memorandum on White House stationery dated January 15, 1970 with the printed heading at the top, "Jeb Magruder Memorandum," and as Exhibit E, a page of handwriting which we believe begins "Marshal from DOD—"

(Whereupon the above described documents were marked as Exhibits D and E respectively for identification by the Reporter and are attached hereto.)

MR. SLOCOMBE: The Jeb Magruder memorandum is D.

THE WITNESS: Which is the one from Magruder?

MR. SLOCOMBE: From Magruder to you and Mr. Ehrlichman.

THE WITNESS: That is D.

MR. SLOCOMBE: The page of handwriting is E.

THE WITNESS: Okay.

Q BY MR. SLOCOMBE: Do you remember receiving the Jeb Magruder memorandum, Exhibit No. D?

A I do not today remember receiving it. But again, this is part of the packet that I have seen and I remember having seen it in that context.

Q Is it your handwriting?

A I believe it is, yes. I have every reason to believe I did see it because I am sure this is my writing.

Q On Exhibit E do you recognize the handwriting?

A I don't remember seeing this before today. This is not in my well-known packet of exhibits in this area.

MR. CHRISTENBURY: Off the record.

(Brief discussion off the record.)

[31] (Consultation among all attorneys.)

THE WITNESS: I don't recognize the handwriting, offhand, I don't believe I have ever seen this before.

Q BY MR. SLOCOMBE: Is it Mr. Magruder's handwriting?

A I don't know. I don't know that I would know Magruder's handwriting if I saw it.

Q It is not in the handwriting of anybody on your staff?

A I can't say that at all. I didn't get much material in handwritten form. Most of it that came to me came in typewritten form and I am not a very good source for identifying handwriting.

I can identify Ehrlichman's because I did get a lot of stuff from Ehrlichman in handwriting. In my view it is not Ehrlichman's. In my view it is not mine. In my view it is not Larry Higby's who was my assistant. He was one I did get a lot of handwritten stuff from.

MR. SLOCOMBE: Mr. Christenbury, may the record reflect that you will make inquiries as to who this handwriting is and pursue it with the special prosecutor and pursue it wherever you got the document and what you know about it?

MR. CHRISTENBURY: Mr. Slocombe, because there has been a rather fair amount of expanse of time between the prior time, due more through my fault than yours, I don't recall—my recollection is that it was after Magruder's deposition that I did contact the special prosecutor's office and my recollection is that they could not add any illuminating factors on this. [32] I will double check

again and we will give you something in writing in that regard.

MR. SLOCOMBE: The package came to the special prosecutor from Mr. Magruder?

MR. CHRISTENBURY: That is correct.

Q BY MR. SLOCOMBE: Other than the handwritten memorandum, you have written on Exhibit D a number of notes. I would like to ask you some questions about this. You have written:

"Why carbon copy to E?"

I assume that means Ehrlichman?

A Right.

Q Do you have any idea why you wrote that?

A No.

Q The M?

A Probably because the M means, I assume, Magruder. Again I don't know why the question arose. I am obviously asking why he sent a copy to Mr. Ehrlichman.

Q Is it possible he sent a copy to Mr. Ehrlichman because Mr. Ehrlichman was the original source of the letter?

MR. CHRISTENBURY: Excuse me. I am a little hesitant for the witness to speculate.

MR. SLOCOMBE: If he doesn't know, he can say that he doesn't know.

MR. CHRISTENBURY: I thought that was his prior response, that he didn't know why the letter was sent to Ehrlichman. I wouldn't want him to speculate why. But, if he knows why, he can certainly answer.

[33] MR. SCHWARTZ: I object for the record because anything is possible. I think that the witness answered, if that was the question.

MR. CHRISTENBURY: Do you want him to answer it specifically? I believe that the answer is already on the record that he doesn't know why he inquired.

MR. SLOCOMBE: His answer was because he was wondering about the procedure.

THE WITNESS: I said I didn't know. I was speculating that it was a procedure. The real question was that I was just wondering why he sent a copy to Ehrlichman.

Q BY MR. SLOCOMBE: I suggest that the main reason that Magruder might have sent a copy to Ehrlichman was that if as we have assumed, what he got first was the December 29th letter with Mr. Ehrlichman's handwritten note to Mr. Haldeman on it and Mr. Haldeman's handwritten instruction to Magruder, it might have been a natural thing to send a copy of his response to Ehrlichman as well as Haldeman. I am asking whether that is a possibility.

MR. CHRISTENBURY: I would have to object and instruct the witness not to answer.

Q BY MR. SLOCOMBE: Do you remember whether you received an answer to your question to Mr. Magruder?

A No.

Q The next notation is "see notes." Let's look at the note. You have written in the first paragraph in effect, summarizing the December 29th letter and you have written in the margin "We know this." What was the basis of your statement?

[34] A I have to speculate. I don't know what it was except that I got annoyed frequently with Magruder's process of purporting to be developing original information that was already available and what he is saying is that they checked it out, the J. Edgar Hoover memorandum, thoroughly. Those other facts as they are cited here apparently are repetitious. So I am saying that we knew this and that is in terms of a sarcastic jab at Magruder for wasting time going back over already plowed ground.

Q You had no reason to believe that the so-called "checking it out," was anything other than reiterating the December 29 memorandum?

A I don't know. But the checking out apparently says the same thing that the memorandum says or at least that apparently is what my impression was at the time I made the margin note.

Q You meant by "We know this," that we know that Clifford was going to write the article. As far as you know, you knew it only from the wire tap or from the letter which reported the wire tap?

MR. CHRISTENBURY: I don't know that the witness has testified to that.

THE WITNESS: I am not sure that that is the case.

Q BY MR. SLOCOMBE: No, I am asking what he meant when he said he knew this.

A I am not sure because I can't now reconstruct what we—I am not sure what the sequence was among all those things. So I couldn't tell you for sure what had taken place [35] prior to my receipt of this memorandum of January 15.

Q I would like to call your attention to Exhibit E, the handwritten notes which seem to read:

> "1. Marshall from DOD all the facts of the Clifford secretaryship—a leak was bad about this re: Viet Nam to Joe Alsop, et al.
> "2. Get Dean Rusk involved.
> "3. Continue the efforts to get support from HHH, Westmoreland, Acheson, Lodge et al.
> "4. Activate the Douglas Committee now.
> "5. A major release from DOD on how the war escalated (in detail). It names those involved, et cetera, et cetera (the rise and decline of the Viet Nam War)"

Q BY MR. SLOCOMBE: Did you give any instructions along those lines to anybody in connection with this incident?

A No.

Q Do you remember whether there was any follow-up of your instructions to Magruder that you entered in

handwriting in the January 15, 1970 memorandum when you say "Let's act"?

A No.

Q Did you make any practice with respect to determining whether Mr. Magruder had followed up on instructions from you of that character?

A I generally did not personally follow up. I [36] assumed that once something was put in motion it went through. I did not go back and follow up on this kind of thing in a formal procedural thing. It would be followed up by the staff secretary. Whether this was in that process or not, I don't know.

Q The memorandum from Magruder that has your handwritten instructions would normally be filed how?

A I am not really sure. I don't know what the process was. Something of this sort or of any sort that came to me and that I reacted to in any form and evaluated and issued instructions on or anything else I generally did or often did by means—by means of making notes on an original document that came in to me and then I put it into my out box. I am not sure what the process was that ensued from the time it went out of my box. I am particularly not sure at that time because I don't know what the structure of my office was at that time. I don't know whether by then Higby had come into my office on a direct basis and was handling the administration of the operation of my office or whether that was before he had come in.

Q Why would you have been in the preparation at this period of time? Why would you have been involved in the preparation of an answer to an article about Viet Nam policy to be written by Clark Clifford?

A I am not sure of that because I don't remember the process of this, how this generated or how it came out as a matter of fact. There was at that time very deep concern about the many problems we had in the conduct of the war in Viet Nam [37] and more importantly, the conduct of the secret negotiations that were under way to try and end the war.

There was a high degree of sensitivity about any of these things being impeded or jeopardized by leaks of information. For instance, the fact of the negotiations becoming known or the progress of them or anything of that sort. When there were problems in this area, I was involved. Ehrlichman at times was involved. Magruder was. Butterfield was and many other people were.

Q But neither the December 29 letter nor any of the follow-up relate in any way to leaks; do they?

A I don't know.

Q Do they?

A I don't know. It seems to me that you are getting into the question of what—I have not studied this 29th memorandum. But Magruder's thing where he says, "It will be a strong article against our policy in Viet Nam, utilizing quotes and information."

As regarding the press, if that gets into information that is other than publicly available information, then it very definitely does get into leaks.

Q The December 29th letter also said that Clifford was concerned about sharpening up his attack on Nixon and that he apparently had obtained some old Nixon statements, one of which being to the effect that President Thieu was one of the five greatest men of our time. There was another statement that Viet Nam was one of the finest hours in American history. Clifford felt that whether the article would be published would [38] depend on what alternative he, Clifford, had to offer, and that he, Clifford, asked him what alternative that he would have. This unidentified individual did not indicate what he told Clifford.

A Let's hypothesize for a minute. An alternative that he offered could well have been that there was considerable more of this kind of thing as well as what was in fact under way.

Q How would it have hurt?

A How would it hurt? It was highly secret. The total success depended on the maintenance of secrecy.

MR. CHRISTENBURY: Excuse me, Mr. Slocombe. I thought my recollection was that Dr. Halperin wrote the article. Is that an incorrect assumption on my part?

MR. SLOCOMBE: I don't think they wrote the article. I don't know when the article appeared or if indeed, this version of the article ever appeared.

MR. CHRISTENBURY: I think that that speaks in a rather articulate way in the area of leaks that could have occurred.

MR. SLOCOMBE: Mr. Christenbury, if you want to ask questions along that line, you may. Are you making an objection?

MR. CHRISTENBURY: I think you asked the witness as to whether this could have involved leaks. I think that he indicated that he didn't know, but suggested a fashion in which it could, I think.

THE WITNESS: No. The question could have involved leaks.

Q BY MR. SLOCOMBE: What part of Mr. Ehrlichman's—

[39] A Let me expand on that. Leaks can take a lot of forms other than simply a story that Henry Brandon in the paper or whatever paper he worked for—I shouldn't name other names, but a journalist in whatever paper. The name happens to be in here in one of these things. The leak does not have to be a press leak in terms of a reporter writing a story that someone inside has leaked to him. A leak can also be ostensibly in this kind of thing in the development or the argument for an alternative.

If you want to go back in history, a prime example of that was in the 1960 campaign when—I recognize this is totally irrelevant—President Kennedy or Senator Kennedy then proposed an alternative to the problem of Cuba that was in fact, what Vice-President Nixon knew was under way and it thus broke a security situation on something. This can happen. It does happen. It was a matter of very major concern.

Q Does any part of either Mr. Ehrlichman's memorandum or your memorandum or Mr. Magruder's memorandum relate to the possibility that Clark Clifford's article, when published, would involve a leak?

A I do not know.

Q Will you read them and point to the parts that you think might?

A No. They certainly don't. That is, specifically. But, I don't know that they don't relate to it. Ehrlichman's thing is purely a general statement which is the kind that Ehrlichman warned me that we needed more of which is not grammatically good, but it makes its point.

[40] Q Mr. Magruder's memorandum is largely devoted to counter publicity campaigns; isn't it?

A Magruder's?

Q That is D.

A Yes, the counter action.

Q And by counter action you mean publicity?

A What he is dealing with is one limited area of counteracting this article.

Q Do you remember whether you gave any instructions dealing with any other aspect of the problem?

A No, I don't know that I gave any instructions on any part of it.

Q Do you have any recollection of any other incidents comparable to this in which you or members of your staff or other members of the White House staff took some kind of follow-up action related to an article reporting on an overhear from Halperin's wire tap?

A No.

Q If there were any written records of such an incident, they would normally have been filed with your papers?

A I don't know. I doubt that. I am not sure.

For instance, this kind of thing I would think would not have been filed with my papers because there is nothing.

There is no memorandum apparently originating from me that a file copy of which would have found its way automatically in my file.

In other words, something came in. I wrote on it. It went out. I don't think we were in the habit of making [41] copies. They may have been. But, I don't think so, of making copies and Xeroxes of this kind of a thing for my file. I don't know whether it was preserved in my file or not.

Q Where physically are the files? Where would they be if they would have been preserved, if they are preserved?

A Locked up in the EOB. If you are expecting to find something in my files, that is where my files are.

Q Mr. Magruder's files?

A I don't have any idea. Mr. Higby's are in effect, mine. They are with mine, as far as I know.

Q You don't have acces to any of those files?

A No, sir.

Q The next exhibit goes back in time to June 4, 1969. It will be an exhibit. It is a memorandum from Al Haig to Mr. Kissinger in preparation for a meeting with J. Edgar Hoover. I want to call your attention to the first paragraph, initially, which says:

> "1. Express your appreciation to Mr. Hoover and Mr. Sullivan for their outstanding support in recent weeks in uncovering security problems within the NSC staff. Inform Mr. Hoover that you have discussed these problems in detail with the President (and with Messrs. Haldeman and Ehrlichman)."

Do you recall any such discussions between you and Mr. Kissinger?

A I have already told you that I do recall—I [42] can't put a specific time designation on it. But I do recall discussing the problems of security in the NSC staff with Kissinger, yes.

(Whereupon the aforementioned document was marked Plaintiffs' Exhibit F for identification by the Reporter and is attached hereto.)

Q This memorandum does not help you in any way refresh your recollection as to the contents of those?

A No, it doesn't say anything more than what I already said.

Q Prior to this time then, to May of 1970, which is what I want you next to turn your attention to—

A Okay.

Q Your contact with the program was that you became generally aware of it and you would from time to time see reports or discuss them with other people on the staff and although you have no independent recollection of it now, you wrote this short memorandum and made notes in connection with the Clifford article.

Do you remember any other contact with the program prior to May of 1970?

A No, I don't think so outside of the general facts you have just summarized.

Q You did not therefore participate in discussions of how much longer the taps would continue?

A No.

Q Nor did you have any discussion of the record keeping associated with it?

[43] A Record keeping?

Q Record keeping in the FBI and the renewal procedures by the FBI?

A No.

Q Did you have any impression during this period as to who was responsible for deciding how long the taps would continue?

MR. CHRISTENBURY: Excuse me. I think that the question in general scope is legitimate. I would question your term "impression." If you want to ask him if he knew—

MR. SLOCOMBE: His understanding.

MR. CHRISTENBURY: If he knew who had responsibility, I would permit the witness to answer.

MR. SLOCOMBE: So restated.

Q BY MR. SLOCOMBE: Did you know who was responsible for deciding how long the taps should continue?

A No. As I have already said, I was not to my recollection, involved in the procedure or the procedural specifications of this project at all. I don't think that any of these procedural questions were matters that I addressed myself to or that I was told about.

In other words, there was a procedure that was under way which I was aware of but which I was not directly concerned with.

Q Clearly you did not feel any responsibility for deciding when it would go off?

A The question never arose.

Q Did you make any efforts to find out who was [44] responsible for the procedural aspects of the tap or for how long it would continue and whether renewal requests would be made?

A No. Like I said, the question never arose in my consciousness.

Q I would like now to turn to the period of May, 1970. Do you recall attending a meeting on or about the 12th of May of 1970, attended by Mr. Hoover, the President and yourself?

A I can't answer specifically that I recall such a meeting on or about that date. I did, over the years, attend several meetings with the President and Mr. Hoover and there may well have been such a one at that time.

Q Do you remember attending a meeting in this time period at which the wire tap program was discussed?

A I have no present recollection of such, no.

Q If you can try to focus in on the area of the meetings which you attended with Mr. Hoover and the President in this time period, do you remember the subject of any such meeting?

A Yes.

Q Did any of those subjects relate in any way to wire tapping or detection of leaks or to discovering what people who were opposed to the Viet Nam War were doing? I will take them one by one.

Did the subject of any of these meetings involve wire tapping?

A Not that I recall, no.

[45] Q Did it involve detecting the sources of leaks?

A Well, you asked if I specifically recalled any subject. The specific things I do recall do not fall into that category, no.

Q And focusing your mind on that specific subject, you still don't remember any discussion with Hoover and the President on that subject?

A Specific subjects that I do recall are totally unrelated to the areas that you are asking me questions about.

Q Do you recall whether any of these meetings involved monitoring the activities of persons who were opposed to the Viet Nam War?

MR. CHRISTENBURY: I would object and instruct the witness not to answer.

MR. SLOCOMBE: Mr. Christenbury, it is our contention and a contention which has been sustained by other outside observers that whatever Mr. Haldeman's personal responsibility, the program was used especially after May of 1970, to monitor the contents of the reports which relate largely to activities in opposition to the Viet Nam War and other kind of political activities. I think that we are entitled to know whether Mr. Haldeman was at any meeting at which that subject was discussed because that seems to me to be central to the question of the use of wire tap information in its second year.

MR. CHRISTENBURY: Unless there have been some depositions I have not attended, I don't know of any where the record states that the purpose of these wire taps was to—

MR. SLOCOMBE: I didn't say that the record stated it. [46] I said that other people have reached the conclusion and it is certainly our contention. I didn't say that anybody said it.

MR. CHRISTENBURY: Well, this case is rather narrowly limited to the issue of wire tapping. Now whether they may or may not have had some concern about people who expressed opposition to the war simply is not relevant. I just don't see any relevancy. I have given my instruction to the witness.

Q BY MR. SLOCOMBE: Just for the record, did you ever discuss the program with President Nixon prior to May of 1970, the wire tapping program?

A In the general sense I have talked about, I think that there were probably some discussions either with President Nixon or in which President Nixon was also present.

Q Did you know whether the President, prior to May of 1970, ever saw any of the wire tap summary lists?

A No, I don't know.

(Whereupon a two-page Xerox copy of a document entitled "Sensitive Technical Coverage at the Request of the White House" was marked for identification as Exhibit G by the Reporter and a copy thereof is attached hereto.)

Q Exhibit G is headed Sensitive Technical Coverage at request of the White House. It has written on top of it, "Prepared for Director's Brief 5/12/70."

Let me ask my earlier question another way. Do you remember a meeting at which you were informed or instructed that from now on the wire tap summaries which had previously been sent to Dr. Kissinger and addressed to the [47] President would be addressed and delivered to you?

A I don't remember any such meeting. I do remember that policy change in the program or whatever you want to call it.

Q In the period of May 1970, what would have been the procedure with respect to note taking and records of such a meeting among you, the President and Mr. Hoover?

A There was no established or inflexible procedure. If you are asking if I had been in a meeting with the President and Mr. Hoover, what would have been the note-taking process normally—

Q Yes.

A Normally, probably if there had been any directive requiring action on my part, I would have made a note of it.

Q Was it your practice as it was apparently Mr. Ehrlichman's, to take notes of the headings of discussions?

A No, not to the extent or in the fashion that Ehrlichman did. Mine tended more to be action notes, either directives or things that came to my own mind as a result of what was going on in the meeting that I wanted to follow up on.

In other words, something I was told to follow up on or something I had on my own initiative decided to do something about rather than just notes for the purpose of the record—

Q At this meeting, evidently you were told to change the procedures for the delivery of the—

MR. CHRISTENBURY: Excuse me. I don't believe that the [48] witness recalls that he attended a meeting.

Q BY MR. SLOCOMBE: You said that you do remember being instructed to change the procedures for the delivery of these records?

A Yes.

Q If those instructions had been given to you at a meeting among the President, Mr. Hoover and yourself, would it have been your normal practice to make a note or memorandum of that action instruction?

A Probably, yes.

Q Where would that record have been filed?

A Those are in my files.

Q Which are?

A Those notes are in the same files that I referred to earlier.

Q And are the subject of our pending motion?

MR. CHRISTENBURY: That is correct.

Q BY MR. SLOCOMBE: Do you have Exhibit G by now?

A Yes, I have not looked at it.

Q I would like to ask you to read it over and indicate whether you have ever before, other than of course in preparation for this deposition after all this became public, may have been aware of the content of the memorandum?

A No.

Q Therefore I gather that you do not remember whether Mr. Hoover summarized the contents of this memorandum in any conversation in which you were present?

A I don't remember his doing so, no.

[49] Q Turning to the decision to transfer and make you the addressee of these records, from whom did you receive these instructions?

A I am not sure. I think from the President.

Q In a face-to-face meeting?

A I don't know.

Q Again you don't remember?

A Right.

Q Were you given any explanation of why the change was being made?

A I could only give you a general impression. I can't give you a specific explanation. It was my impression that there was concern on Kissinger's part and the President's, I guess, that were involving reports on members of Kissinger's staff and that it was a difficult problem for Kissinger to receive these reports when he had to deal with these people and rely on these people on a day-to-day basis. It was felt that it was a better procedure, especially

given the heavy burden and the nature of Kissinger's office in any event at that time, that it was a better procedure to have the initial reports come through me, rather than going directly to him, with the thought that any item that was of concern to be brought to Haig or to the President's attention.

Q When you say if there was anything that was an item of concern that was to be brought—

A That appeared to indicate further source of leaks and appeared to indicate that they would provide information going back to leaks that had already taken place or [50] indications of things that might be forthcoming.

Q What were your general responsibilities in the White House at this time?

A They were really all encompassing. I functioned on an across-the-board basis as the manager of the White House office for the President. I worked with all the people on the White House staff at the senior level. In effect, the title was assistant to the President, but the working title has been used that is Chief of Staff. That is not an inapt title. I was involved in vritually everything that the President was involved in.

I guess you could say it was a purely staff position as contrasted to an essentially line position that other staff people had, if that is possible. I operated totally at the President's direction and my time was totally based on what the President was doing or wanted me doing. I did not have other than administrative operation of the White House,—I did not have ongoing, substantive responsibility for policy areas.

But I worked closely with all the people who did, in developing policy recommendations and getting them to the President and getting them augmented.

Q After what happened yesterday, I am almost hesitant to say this and without any disrespect—

A What happened yesterday?

Q You were not aware of what was going on in the foreign policy area? You did not consider yourself as hav-

ing substantive responsibilities for national security decisions?

A That is correct.

[51] Q Did you have such responsibilities for law enforcement?

A No, I didn't in any policy area.

Q I would like to show you what will be the next exhibit which is a memorandum from Mr. Haig to Mr. Sullivan. It is headed R. H. Haynes Memorandum, May 15, 1970. I would like to call your attention to the second paragraph which purports to recount a conversation between you and Haynes. I would like to ask if that accurately states the substance of that conversation?

A I have no present recollection of the conversation. I have no reason to believe that it does not accurately reflect it.

(Whereupon the above described document was marked as Exhibit H for identification by The Reporter and is attached hereto.)

Q In the final paragraph which says that you would advise Kissinger on the evening of May 14 regarding the instructions, do you remember whether you did so in fact instruct him?

A I have the general recollection that I did. I can't recount again the specific occasion of having done so.

Q Do you remember at all whether you did it by telephone or in person?

A No.

Q It is possible that you did it by telephone and you spoke to him on the telephone from time to time?

A Yes, sure.

[52] Q If you spoke to him on the telephone, would you have caused any recording to be made of the telephone conversation?

A No. I didn't make recordings of any telephone conversations, with only one or two exceptions in totally unrelated areas to this.

Q Were you at this time aware that Mr. Halperin was no longer on the staff of the NSC and indeed, resigned as a consultant about a week before?

A I don't know.

Q You don't know if you were aware of it?

A That's right.

Q Was there at this time any discussion which you participated in or which you became aware of, of the legality of wire tapping people who no longer had any connection with the government, other than as former members of the government?

A No.

Q After your conversation with Haynes on the 14th of May, did you in fact, receive the summary reports in accordance with the instructions which you gave, you or your office?

A I or my office? It said in accordance with the instructions? I didn't think the instructions that are spelled out in paragraph 2 of Exhibit H were literally followed.

Q Could you describe in general and specifically as you can, with laborious detail?

A The only exception could be that Higby was to hold it unopened. I think at the outset and again this is a [53] general recollection, that the procedure we were going to follow was that Higby would receive this material and would not open the envelope. He would give it to me unopened. I would open it and review it. I think that very shortly, we changed that process and that he did open it and in other words, he reviewed it prior to it coming to me.

Q I want to come back to that. After you had these in the early stages when you were reviewing them, what did you do with the papers thereafter?

A I am not sure. I have to assume that I turned it over to Higby.

Q And do you know what Mr. Higby did with it thereafter?

A I don't know whether he would then return it to the FBI or whether he was told to put it in my file or in my safe. I am not really sure.

Q Did you have a safe in which you stored sensitive material?

Q I had a small safe in my office that I used for a general purpose. It was for current storage. It was not for filing storage. But, it was for current storage. If I had sensitive material in my possession that I was dealing with or would be dealing with in the next few days, I would sometimes use that safe to store these materials in for a few days. It was a very small safe. It was not used as a continuing file. That was done in some other safe in a secretary's office.

Q Would you please describe what you did with respect to Mr. Higby's role? You said that you would initially [54] open the letters yourself and read them?

A I think so, yes.

Q Thereafter you changed the procedure. How did you change the procedure?

A I changed it in the sense that instead of Higby delivering them unopened to me, that he opened them and reviewed them and brought them to my attention, those that contained information that in his judgment might be something that should be acted upon or considered further.

Q What were Mr. Higby's general responsibilities?

A My administrative assistant.

Q Did he have any substantive responsibilities with respect to national security?

A No, none whatsoever.

Q With respect to law enforcement?

A No.

Q Did you give him any instructions as to how he was to form the judgment as to what to show you?

A None that I can recall specifically. I am sure we talked over the question of what should be brought forth and I don't know—I am not sure whether it was on the

basis that he was to deliver and review it and give anything to me—or, I don't know whether he was doing some sort of preliminary screening.

My impression is that he was doing some preliminary screening and only sending in to me material that had actionable significance.

Q But you gave him those instructions as to how he [55] was to decide what was actionable and significant?

A I didn't say that. I said that I don't recall the specific instructions. I said there was some instruction discussion between us. We worked very closely together on a continuing basis throughout every day.

Q During the period of May 1970 to February 1971 when the tap was terminated, with whom did you discuss the reports that you received?

A I have no specific recollection of any discussion of the reports or any one report or any one specific discussion. I have a general recollection of several discussions with Haig and Kissinger and/or Kissinger. I don't have any recollection specifically of any such discussion with the President at that time. But, there may have been some because I think there were discussions in which the President was involved over the total period of time that this information was coming in. Whether it was after it had been transferred to me or not, I am not sure.

Q You say there were several. Can you attach a number to that?

A No, I can't. I can't even give you a number. I couldn't give you an estimate or a number of how many reports I received.

Q Was it on the order of two or three or 20 or 30? I do not mean that those are the exclusive possibilities. But, in terms of the order of magnitude.

A It would be about two or three or a half a dozen. That is, rather than many dozens.

[56] Q Do you remember whether there were any of those instances in which you discussed the contents of the reports with Haig, Kissinger or President Nixon in which

there was information learned from Morton Halperin's tap?

A I don't know. I don't remember specifically which taps the information related to, whether it was Halperin's or any other specific person.

Q Did you know that Morton Halperin was at that time working with Senator Muskie as a foreign policy advisor and consultant?

A I guess I did because I think that information was identified in some—I mean that fact was identified in some of the information.

Q Did you ever form any conclusion as to the utility and the usefulness of the wire taps?

A My general feeling was that they were not of great usefulness in that they never seemed to develop anything that was definitive. There were indications and pieces of information that raised possibilities and raised concern, but didn't give any answers.

I had the impression that there was also a substantial amount of irrelevant information in the reports that we received in addition to what seemed to have some relevance.

MR. SLOCOMBE: I would like next marked for identification as Exhibit I an FBI memorandum, a 302 form reporting an interview with you which purports to have taken place May 11, 1973.

(Whereupon the above described document [57] was marked Exhibit I for identification by the Notary Public and is attached hereto.)

(Whereupon a luncheon recess was taken, the deposition to be resumed at 1:30 o'clock p.m.)

(Whereupon, at the hour of 1:30 p.m. the deposition of H. R. HALDEMAN was resumed at the same place, the same persons being present.)

MR. SLOCOMBE: I think we had labeled the 302 as Exhibit I.

Q I would like to call your attention to the third paragraph which reads:

> "Mr. Haldeman advised that he recalled receiving summary letters concerning these wire taps and that he received them routinely from the FBI. He said he could not recall who the courier was because the summary letters would actually go to his administrative assistant, Mr. Lawrence M. Higby. He said at first he read all the summaries which came into his office but found them to contain information which really was not of much interest to him. The contents of the letters did not contain any startling information and he eventually [58] delegated authority to read this material to Mr. Higby, who would review the summary letters and bring to his, Mr. Haldeman's, attention only those matters which Mr. Higby felt would be of interest."

First I want to ask whether that statement—not whether you said it to the FBI but whether it is accurate in substance?

A Not exactly. It implies that none of the contents contained the words "startling information." I don't know if I used that. But it implies that there was no information of interest whereas there was from time to time information that I think I did feel was of importance.

But there are also—there was information that covered the whole range of reports on all individuals not just the one involved here that didn't seem to have any merit. I don't mean merit, but any use in determining the source of any of our problems.

Q Do you ever remember telling Mr. Higby of your judgment as to the utility of the information?

A I have no specific memory of doing so. I am sure that in the ongoing process I commented to him on the reports from time to time.

Q What was your understanding at this time as to the procedures for the conduct of the wire tap? Specifically, did you have any knowledge at the point you were the ad-

dressee, of what records the FBI was maintaining of wire taps?

A No.

[59] Q Do you know whether regular renewals were being requested and processed in the normal course?

A No.

Q Did you receive any instructions from the President with respect to proceeding on the matters, other than that you just received them?

A Other than the change in procedures, as far as a conduit for the reports, no.

Q Were you aware of any instruction from the President then or earlier as to the duration of the taps?

A I don't think so, no.

Q Any instructions with respect to what kind of information—from the President or anyone else—ought not to be picked up on the wire taps and recorded?

A No.

Q Specifically, were you aware of instructions given by anybody to minimize the interception of privileged communications such as attorney/client or husband/wife?

A No I was not aware, as I have said earlier in a general sense. This applies to all of these questions of any of the procedural specification of this operation.

Q Did you understand that your function with respect to these wire tap summary reports included an assessment of the continuing usefulness of the taps?

A No.

Q Who did you understand was to be assessing the continued usefulness of the taps?

A I had no understanding of that point. It was [60] not a question of which I was aware.

Q You don't know for example whether Dr. Kissinger had that responsibility in that context?

A I had no idea. The question of who was responsible for this was not a question that came to my consciousness

either at my own initiative or at anyone else's. It just never arose.

Q Did you have any discussion with anyone as to the effect of a continuation of a tap, as to the legality of the tap?

A No.

Q Did you form a belief with respect to the legality of the tap during this period when you were the addressee at the White House of the reports?

A Form a belief? As I said, I have never—I did not consciously ask myself nor did anyone else ask me anything that would remotely relate to that point, the legality of the taps.

I was brought into an ongoing program prior to my being the conduit for the material in the sense that I knew it was on and saw some of the results and engaged in conversations from time to time with people on the subject of the results and the contents.

I don't recall ever being engaged with anyone at any time in any conversation regarding the legality or any of the other procedural aspects of this program. It was an ongoing program of which I became aware during the course of its going on. My awareness came up in the context of the [61] knowledge that the President of the United States and the Attorney General of the United States and the Director of the Federal Bureau of Investigation and the National Security Assistant to the President of the United States—there was no possibility. It was inconceivable that the question of the legality would have arisen in my mind.

In other words, this was clearly a presumption and not a conscious one because the question was not put.

But in the back of my mind, in the absence of any indication of illegality or any question of legality, I operated on the subconscious,—I guess you would have to call it,—a presumption of legality and propriety.

In other words, this was something that was going on. Beyond that, I knew that the technique or the procedure

of wire tapping had been used in the past and was being used at the time in the context in the course of law enforcement investigations and intelligence investigations and that kind of thing. So I had no basis for questioning the legality.

Q The four people you identify were Nixon, Hoover, Mitchell and Kissinger?

A That is correct.

Q How did you understand their involvement in the tap? How did you understand that they had been involved with the tap?

A With the possible exception of Mitchell, I had discussed with them about the taps or they had discussed with me or I was in on discussions among them about the taps.

[62] Let's see. I should say that such discussions were going on. Such discussions were being had by Kissinger and the President at various times.

Now the letters that were coming, once I was receiving them, came from Hoover. So I obviously knew that Hoover knew about it. Maybe I am just assuming on Mitchell.

I probably should correct what I said to withdraw Mitchell's name because that is probably an assumption as of today that might not have been then. The whole thing I am talking about is an assumption because it just never rose to the level of consciousness.

Q None of these conversations that you had with any of the people that you had conversations with or whether it was Nixon, Hoover or Kissinger, related directly to the legality of the wire taps?

A That is correct.

Q You said that you knew the wire taps were used in connection with law enforcement purposes. Did you know whether those taps were instituted pursuant to a warrant or not?

A I knew nothing of the technicalities or procedures or legalities of it at all.

Q Were you familiar with any of the statutes relating to wire tapping?

A No.

Q Were you familiar with any of the court decisions relating to wire tapping?

A No.

Q What did you understand to be the procedure for [63] terminating the tap?

A I had no understanding.

Q What was your understanding as to how long the tap would go on?

A There was none. It was not a question that arose.

Q It was your understanding that it would go on until somebody else turned it off?

A No, that is saying that I had any understanding. I had no understanding.

Q Did you have an understanding as to what criteria would be applied for deciding how long to continue the wire tap?

A No.

Q Did you understand that Dr. Kissinger had any special responsibilities with respect to continuing the wire tap?

A I have said that I had no understanding as to the question of the continuance or the termination.

Q What did you understand it to be? How long would it go on?

A Nothing.

Q It would simply go on indefinitely?

A No. I didn't understand anything. I didn't understand that it would go on or that it would not go on. You can't create an understanding of a subject which never arose.

Could I go back and amplify a little bit on this? It may help to clarify it so that it is perfectly [64] reasonable and understandable. This whole question never arose in my mind because of—you have to recognize my role in this which was as a conduit—I was simply an observer of the conversations or discussions of the results.

At no time in any of this process was I ever instructed nor did I ever assume that I had any responsibility in connection with the procedure, other than the delivery to me of the reports that were involved in this, either of starting or stopping or of any of this sort of thing.

I was not in that kind of a position.

Q Who else was familiar during this period with the wire tap? Who else knew it was on?

A Who else besides whom?

Q Let me ask you specifically. I think that there are people you have identified. They were yourself, Mr. Higby, Mr. Nixon, Mr. Ehrlichman and—may the record show that the witness is nodding yes.

A I thought you were going to assume that I was saying yes to all of them.

Q Dr. Kissinger, General Haig, Mr. Mitchell, Director Hoover and other people in the FBI.

A Right.

Q Anybody else on the White House staff?

A No, no one else that I am aware of. There was no one else I believe in my office. The only other possibility might be in the administrative side of Kissinger's office. I don't know who it was at the time. At any time, he had an administrative assistant of the sort that Higby was to me who, [65] so far as I knew, had total knowledge of everything coming and going within Kissinger's office. Whoever that was at the time probably would also have been aware of it.

Q Was it David Young?

A I don't know.

Q Do you know David Young?

A Yes. David Young was one such person at one point. I can't remember the names of the rest. But, he burned them out at a rapid rate.

Q I want to show you what will be Exhibit J and Exhibit K which are two of the letters which were addressed to you. J is a letter of June 23, 1970 on FBI letterhead and K is November 3, 1970, also on FBI letterhead. It is a two-page document.

(Whereupon the above described documents were marked Exhibits J and K respectively for identification by the Notary Public and are attached hereto.)

MR. CHRISTENBURY: Excuse me, Mr. Slocombe. Before we go ahead, the witness and I have conferred and I think that there is a further clarification as to one of his earlier statements if we might.

MR. SLOCOMBE: No objection.

THE WITNESS: It would simply be that in describing my limited position as a conduit, rather than as involved in the procedures of this thing, other than in receiving reports myself, there was one exception that I was involved in the process of ordering one of the wire taps that was conducted in [66] this program at a later time that had nothing to do with the coverage of Mr. Halperin.

I don't believe I had any involvement in the termination of any of them.

Q In ordering or in your role in ordering that wire tap and in any of the answers to these questions dealing exclusively with that wire tap—if they are say so—in your role in ordering that wire tap, did you have any understanding of procedures for a wire tap program if that wire tap was to be—

A The answer is no. I did not. As far as I have any recollection, I did not at all.

Q I have asked you a series of questions about what you think appropriately characterizes procedural matters and your role with respect to this wire tap.

Did this wire tap in any way expand your understanding or your knowledge of what seemed to you the real issues with respect to that whole range of questions of procedures, duration, relevance and so on?

A No.

Q When you ordered it or participated in ordering the other tap, what did you do?

MR. CHRISTENBURY: without identifying—

MR. SLOCOMBE: Without identifying who it was on.

THE WITNESS: I am not able in my recollection, to tell you what I did except that it is refreshed by material in the record.

Q BY MR. SLOCOMBE: It was refreshed—

[67] A Which would indicate that I or at my direction, a call was made to Director Hoover requesting that surveillance on wire tap coverage—I am not sure how it was put, be placed on the individual.

Q In your role in that order, did you address at all the issue of legality, other than as you have testified?

A No, not at all.

Q Did you address the issues of procedures other than as you have testified?

A No, not at all.

Q The issue of responsibility for limiting the range of subjects that was overheard?

A No.

Q None of the other areas that I have asked you about?

A None at all. The only thing involved was the addition of one other individual.

Q Turning to Exhibit J—

A I am sorry, which was that?

Q That is the June 23 letter, just for the record.

By this time, of course, there was no doubt when you received one of these letters that they were reporting on

wire taps when they used the phrase "extremely sensitive sources?"

A I am not prepared to say that that is the case. There is no doubt that this could, as I said before, encompass in my mind and I would read this and assume that it could encompass the wire taps but I don't know that it would [68] necessarily be limited to that.

Q When you and Mr. Higby received those letters with reference to Mort Halperin, did you have any questions related to taps?

A The question didn't arise in my mind as to what it related to. It related to the ongoing request for information in the effort to determine the information we were after on where the leaks were coming from or the potential problems that might arise from forthcoming leaks.

The point is that it was not my impression that my thought at the time was that the wire taps were the only source of this kind of information.

Q To your knowledge were there other extremely sensitive sources being applied to produce information like this?

A I had no knowledge that there were but I had no knowledge that there were not.

Q Turning to the contents of this letter, it says:

> "Morton H. Halperin, who recently resigned from the National Security Council as a protest against the invasion of Cambodia, was contacted by Howard Gillette (phonetic), who is apparently connected with Project Purse Strings, a group formed to support 'Peace' candidates in forthcoming elections. Halperin, at Gillette's request, agreed to talk to the 'top people' in the offices of Senators Norris [69] Cotton and James B. Pearson on the war in Cambodia. Gillette described Senator Cotton as 'marginal' on the Church-Cooper amendment but said that Halperin's talk could make Senator Pearson save the amendment."

Was reporting of that kind of information to you consistent with your understanding of the purposes of the wire tap?

A I am not sure. On the surface this would, I think, seem to be incidental information that probably didn't have any bearing on the purpose of this or the issue at hand.

On the other hand, as I understood the intelligence process, the intelligence gatherers in this case, the FBI, were not trying to evaluate the information that they got in terms of its relevance. They were simply passing it on to others who hopefully would be able to do that. This was something that might be information that would have a possible application and therefore was passed on with that in mind.

I can see how this kind of thing for instance could be viewed as within the purview of the project in the sense that if Halperin in this case is going to talk to these people about this subject, the war in Cambodia then of course at that time that did still involve some highly secret activities. I don't think up until then these things had been known by the public in terms of bombing. These are things that I am speculating here. I am merely hypothesizing just to show the possibility of an application within even this apparently nonapplicable piece of information. Presumably [70] Halperin was aware of what was being done in Cambodia.

If this was made known to unauthorized persons who then used it in an unauthorized way, it could be highly detrimental as a leak.

As I was talking about earlier in the leak process, especially where you have a national security leak, if it is made to a United States senator or an unauthorized person on that basis who then makes an unauthorized statement to a newspaper reporter or in a television interview—

Q Were you aware that in early May of 1970, Morton Halperin had publicly announced his resignation as a White House consultant and indicated that he would

thereafter work in various groups that were opposed to the administration policy in Viet Nam?

A I don't think that I was aware of the announcement. In a sense, that is spelled out in the description of Halperin in this memorandum.

Q What was your judgment? Was it your judgment that any reporting of activities related to Viet Nam or to foreign policy undertaken by Mr. Halperin was probably within the scope of the purposes of the wire tap?

A No. Let's see. I am not sure. Are you asking for a judgment that I did not make? I can't really answer whether that was my—I can't say that that was my judgment because that was not a question I addressed myself to. Let me say however that I am sure that it would have been my judgment at the time that an activity of Halperin's could be within the purview of the concern here.

[71] I am not saying that all activities were. I wouldn't think that that would be the position that all activities would be. But, this specific activity could be.

In other words, Halperin was supposed to have knowledge of national secrets. I don't know how you would actually define them. But, that would describe them accurately. He was the possessor of classified information. It was in his head.

Presumably and maybe possibly, it was on papers in his possession. Misuse of that information in terms of leaking it in whatever form would have fallen within the area of concern here.

Q Do you remember seeing this letter at the time?

A You mean today do I remember it?

Q Do you today remember having seen the letter in June of 1970?

A No, not specifically, no.

Q Would your instructions to Higby or the pattern that you and Higby had established have required him to send you this letter?

A I can't answer that. I don't know.

Q There were many letters I take it which he did not send you?

A I don't know that.

Q Have you reviewed with your counsel or otherwise, the full set of letters which was addressed to you?

MR. CHRISTENBURY: We have shown Mr. Haldeman the letters addressed to him.

[72] THE WITNESS: Is that the full set?

MR. CHRISTENBURY: Because of the press of time I am not sure that we had an in depth review of them. He has purused the letters addressed to him.

THE WITNESS: That group that you showed me? Was that the full set?

MR. CHRISTENBURY: That was the full set.

THE WITNESS: I would guess it was something around eight or ten. It was something about like that wasn't it?

MR. CHRISTENBURY: Yes.

MR. SLOCOMBE: This is the full set of letters about Halperin?

MR. CHRISTENBURY: We showed him the letters specifically addressed to him relating to Dr. Halperin, right.

Q BY MR. SLOCOMBE: Do you remember receiving any of those letters at the time? If so, which ones?

A The answer to the first part of the question is no in terms of receiving letters. In a general response to the end of your question, I think as I looked over or as I looked them over the other day, they looked familiar. But I can't tell you that I saw this one and I didn't see that one. There is a general sense of familiarity to all of them.

Q Other than simply that they are familiar in format or general sense that you read that letter once before—

A No. I would say the general format, the general tone and general content is familiar but not the specific of describing anyone.

Q Are there any which you specifically remember [73] not receiving but that you specifically believe that you read in preparation for this deposition that you had not ever seen before?

A I didn't review them with that thought in mind. I reviewed them quickly, so I can't answer that.

Q I would like to ask you rather than hand them out to you now, if you would review with your counsel the letters in sufficient detail for you to say whether you believe you saw them contemporaneously or you affirmatively believe that you did not see them contemporaneously or that you were unable to form any conclusion as to whether you did or did not; is that agreeable?

MR. CHRISTENBURY: That is fine. Would you like to do that at this time or what would be your pleasure?

MR. SLOCOMBE: I am agreeable to having you do it at your reasonably earliest convenience and advising me. I think the most appropriate form would be of an affidavit. If there are some questions we could proceed further by written interrogatories.

MR. CHRISTENBURY: I don't have any problem with that. I think that he would rather get it resolved.

(Short recess.)

Q BY MR. SLOCOMBE: Mr. Haldeman, have you had an opportunity to review the letters?

A I have reviewed them all and I am sorry to say that I can't give you a positive or negative response on any of them as to whether I can recall specifically having seen that particular memorandum. I just have to say I don't know on all [74] of them.

Q That being the case, I won't ask you specifically about any of them individually and that includes the November 13 letter which is Exhibit K.

You described yourself as a conduit with respect to these reports. You were a conduit to whom?

A A conduit between the FBI and the White House or from the FBI to the White House.

Q And at the White House end?

A To Kissinger, Haig or the President.

Q And what was it that you would do as a conduit?

A What you do is to pass on. My general understanding was that I would pass on anything that provided useful or potentially useful information regarding a possible source of a past leak or what appeared to be a warning of an upcoming leak.

Q Did you understand that you had any responsibility with respect to information that seemed to you inappropriate or irrelevant that was being reported in these letters?

MR. CHRISTENBURY: Responsibility to whom and with regard to what?

MR. SLOCOMBE: With regard to irrelevant and inappropriate material. Responsibilities I guess, to the President since he was the source of—

MR. CHRISTENBURY: It may be for my own clarification—I presume where you are going is as to whether he had any duties to instruct the FBI that he did not want certain information or [75] wanted certain information.

MR. SLOCOMBE: If you want to ask him that, you may. But I want to ask him whether he had any responsibilities to anyone, if he concluded that the information that he was getting was inappropriate or irrelevant.

MR. CHRISTENBURY: As long as the witness understands the question, I will permit him to answer.

THE WITNESS: My answer would be that I didn't consider that I had any such responsibilities except in a sense, the passive responsibility not to pass along information that I didn't consider relevant. I had no positive responsibility to do anything about it.

Q Specifically, you were not to tell the FBI that you didn't want this kind of information?

A I can't confirm the negative. I was never told that I was to tell the FBI that.

Q Were you told to tell the people that you would pass relevant information on to, if it was relevant, that is Nixon, Kissinger and Haig, that what you were getting out of the tap was irrelevant and inappropriate and that perhaps they would want to do something about it?

A No. I don't recall any interchange in either direction on that point.

Q In reviewing the letters, were you able to form a conclusion as to whether you would have passed on the kind of information that is included in the Halperin letters?

MR. CHRISTENBURY: Excuse me. I have a little trouble with that question. He has indicated that he does not recall [76] seeing or does not have a present recollection of ever seeing these. Given that framework, I don't know whether—I am troubled by the question that in effect, speculates as to what he might have and might not have done given the fact that he simply doesn't recall at this time seeing these documents.

MR. SLOCOMBE: I don't think the question asked him to speculate. It asked him whether he is able, having reviewed the letters, to form a conclusion as to whether he would have passed the information on.

MR. CHRISTENBURY: I still feel that it is placing the witness in a position that he doesn't want to be at this point in time, given his prior testimony.

MR. SLOCOMBE: I would still press the question.

MR. CHRISTENBURY: I want to be helpful because I appreciate what you are doing. Possibly, if the witness feels that he can respond at this time I will permit him to. I guess the question is can he at this time form a conclusion as to whether he would or would not have, six years ago—

MR. SLOCOMBE: Whether it is the kind of information that—the information he just read in those letters is the kind that he passed on to President Nixon and Dr. Kissenger and General Haig.

MR. CHRISTENBURY: I appreciate your point. But I will persist in the objection. I think he has outlined the general standard under which he utilized to pass on such information. That is, if it could involve a potential leak or the possibility of a future leak, that was the standard. I hope that part is helpful.

[77] But since he does not have any present recollection of having seen these documents at that time, I am troubled by the following question. I must object.

(Off the record conference among the attorneys.)

Q BY MR. SLOCOMBE: If we can turn to when the tap was actually taken off, when did you learn that the tap on Morton Halperin's telephone had been discontinued?

A I can't give you a date. I know that it was at a specific time. I don't know when that specific time was. I was told and I don't know by whom, that the program of taps was being stopped and there would be no further reports.

Q You can't recall who told you that?

A No.

Q Did you ever have any contact with Mr. Sullivan of the FBI in this connection?

A I don't think I did in this connection.

Q With Mr. Haynes?

A Well, that name doesn't mean anything to me except as it is recalled by this memorandum and on the basis of his memorandum, I must have met him.

I know I did meet a man who was the FBI White House liaison man and at the outset, I think the first delivery of a report, this man was introduced. There was a meeting set up with me. I was introduced to him. He gave me the report. We talked a little. That is when we set up the procedure that he would deliver those to Higby if I was not available.

I don't think he ever delivered any subsequent [78] reports to me, although it is possible. I think I may have seen him in the corridor or talked with him in passing. I know I embarrassed Higby by not recognizing the guy

when he thought I should have. I hurt his feelings. So I made a point of trying to recognize him. But I never did remember the name.

I think they also changed the FBI liaison man in the midst of this somewhere.

Q But somebody told you that the tap was being discontinued and it was not just the letter stuff?

A I am sure I was told—at least my feeling is now that I was told that it was going to be discontinued and that I learned this. I am not sure from whom I learned it.

It was not from Mr. Haynes. I am quite sure of that.

Q Could it have been from Dr. Kissinger or General Haig?

A We are speculating. It could have been from any of those people. I just am not sure.

Q If I understood you correctly, you said that you heard that the tap was going to be terminated. Did you mean that it would shortly be terminated?

A Yes. That was my understanding. That is my recollection, that I was told that the program was being stopped and that the taps were being taken off and that there would be no further reports from the taps.

Q Were you informed or consulted?

A My opinion is that I was informed.

Q Did you form any conclusion as to the [79] appropriateness of turning the taps off at that point? Do you remember how long the interval was between being told that they would be taken off and the time that the letters stopped or that you learned that it had been done?

A I think it was in a very short frame of time.

Q A day or so?

A Yes.

Q Do you have any explanation for why the taps continued for the period that it did?

A No.

Q Were you aware of the practice by the Federal Bureau of Investigation of terminating wire taps shortly before Director Hoover was to testify on the FBI appropriation?

A I believe that I became aware of this practice. I was told the taps were to be stopped.

Q You were told the reason that it was being done?

A It is my impression and my recollection that all taps that could be removed at that time were being removed and that this program was one such that it was felt that it could be and so it was being.

Q Felt by whom?

A I don't know.

MR. SLOCOMBE: We are at Exhibit L which is a one-page memorandum dated June 15, 1971. It seems to have been continued but we have only received one page. I would like to ask a few preliminary questions about this.

(Whereupon the above described document [80] was marked by the Notary Public as Exhibit L for identification and is attached hererto.)

Q BY MR. SLOCOMBE: What was your involvement? Were you involved in or present at any discussions of the investigation of the Pentagon Papers Affair?

MR. CHRISTENBURY: We will object and instruct the witness not to answer.

Q BY MR. SLOCOMBE: To your knowledge, did the name of Morton Halperin arise in connection with the discussion of the Pentagon Papers investigation?

MR. CHRISTENBURY: I will object and instruct the witness not to answer the question as phrased. As we have discussed yesterday, I don't want to belabor my objections. I think that you do have an appropriate inquiry as to the use of electronic surveillance material by relating it to Dr. Halperin. If you seek to probe these other areas we would certainly not permit the witness to answer.

MR. SLOCOMBE: Mr. Christenbury, the only way to approach that that would be helpful is if the witness was at

a meeting in which somebody said that they wire tapped Halperin and they found out useful information about the Pentagon Papers or something like that.

However, I think that we are legally entitled to know if there was a discussion of Morton Halperin in connection with the Pentagon Papers and some substantive information was reported in that connection which matches information which was available from the wire taps.

There is the blind memorandum which clearly [81] implies that somebody was reporting to somebody, presumably somebody from the FBI was reporting to either somebody in the FBI or somebody at the White House information which was obtained from the tap. I think we have a right to know how that information was used at that time and how it relates to the use of information from the wire tap. But it does not depend on the witness knowing that the information came from the wire tap.

It would be relevant to further use that he knew that information which in fact came from the wire tap, and it was mentioned with the discussion of the Pentagon Papers investigation even if he did not know it came from the wire tap.

I take it that you would not object if I asked him if he was at a meeting where information from Morton Halperin's wire tap was discussed in the context of the Pentagon Papers investigation?

MR. CHRISTENBURY: No, not at all.

MR. SLOCOMBE: I am happy to ask that question without limitation.

Q Were you at any such meeting?

A I have no recollection of any such meeting.

MR. SLOCOMBE: I am happy to have that answer on the record. But I think it is wholly unsatisfactory to limit us to that question.

MR. CHRISTENBURY: I do feel strongly on the point, particularly as I indicated yesterday in light of the interrogatories.

MR. SLOCOMBE: What part of Mr. Halperin's interrogatories makes you take that position?

[82] (Discussion off the record.)

Q BY MR. SLOCOMBE: Would you please examine Exhibit L which is one page of a longer memorandum which reports various information about Morton Halperin? Would you please examine the one page of the multi-page memorandum, the other pages of which are not available to us or to anybody else?

MR. CHRISTENBURY: There is a certain implication that I have the other page. We have been unable to locate the other page.

Q BY MR. SLOCOMBE: Please indicate whether any discussions of the Pentagon Papers investigation in which you were present, the substance of that information that was discussed. Preliminary, have you ever seen this document before today other than in connection with preparation for the deposition?

A I have not seen it in connection with the preparation, I don't think. No, I have not seen it before. I don't believe I have, anyway. I have looked at it.

Q Were you present at any discussion in June, July or August of 1971 in connection with the Pentagon Papers investigation, the substance of the information which is reflected on this one page that is discussed?

A No, not to my recollection. I don't recall being involved in discussions regarding the Pentagon Papers investigation except in a very general sense.

Q Exhibit M is a page from Mr. Ehrlichman's notes of a meeting of June 17, 1971 which purports to be notes of a meeting attended by you, Mr. Ehrlichman, Dr. Kissinger and the [83] President. I want to call your attention to the note numbered 6. I will ask first whether you recall the meeting?

A There is no way I can recall any specific meeting of these four people because there were so many of them. I certainly recall many meetings with these four people involved.

(Whereupon a one-page Xerox Copy of handwritten notes was marked as Exhibit M for identification by the Notary Public and is attached hereto.)

Q BY MR. SLOCOMBE: It was a meeting at which I think other evidence indicates that Dr. Kissinger gave a summary of his knowledge about Daniel Ellsberg.

A Yes. I remember the thing. I remember very clearly at some point—I can't say that it was this meeting—but it would appear from John's notes that it is, Kissinger telling us of Ellsberg's predeliction while in Viet Nam for getting in a helicopter and being flown low over the terrain so that he could shoot and kill Vietnamese as a sort of a sport which was weird enough to have stuck in my mind rather vividly.

The rest of this,

"Always a little unbalanced, drugs; flipped; linked to peaceniks—"

I don't remember any of that. But particularly, those sort of fit a pretty generalized thing, shooting at the peasants. I do recall that and my recollection which isn't mentioned here of the other points that stuck in my mind was that he had very peculiar sexual tendencies.

Q Do you recall the discussion of drugs?

[84] A No.

Q Do you recall any discussion of Ellsberg and drugs in this period?

A No. The only thing in terms of discussing Ellsberg that I do recall is this characterization by Kissinger. I do recall Kissinger describing Ellsberg. But, as I said the only thing that sticks in my mind on it is that thing about shooting at people and the sexual pecularities.

Q Did Kissinger give any indication of the source of his knowledge?

A In fact, Kissinger made a point that he had been very close to Ellsberg in the past at some time.

Q Did Kissinger give any indication apart from the general sense of being close to him of how he knew about these rather more or less esoteric allegations?

A No, I don't recall that he did. These were just—

Q Did anybody ask how he knew?

A Not that I recall, no.

MR. SLOCOMBE: I'd like at this time Exhibit N marked for identification. It is a four-page sheaf of handwritten notes of John Ehrlichman and it is attached hereto.

Q The next item on Mr. Ehrlichman's notes which are heavily excised of a meeting attended by you, Mr. Ehrlichman, the President and we understand from Mr. Ehrlichman, that RMW stands for Rose Marie Woods, which took place on July 10, 1971.

I want to call your attention to the numbered paragraph 11 on page 141. Also I want to call your attention [85] to the paragraph numbered 10.

With reference to numbered paragraph 10, do you have any recollection of that part of the conversation?

A None at all.

Q Mr. Ehrlichman has testified that it is his recollection and I am sure Mr. Schwartz will correct me if I get this imprecise, was that Secretary Rogers had advised that the administration should be tapping more. Does that refresh your recollection?

A No.

Q Of that part of the conversation?

A When was that?

Q This was July 10 out at San Clemente. We understand—

A No.

Q Paragraph numbered 11 which reads:

"Grand jury—don't worry re: taps on discovery re: WTPS."

Do you recall any discussion at this time or any other time about a tap and the impact of taps on calling grand jury witnesses?

A No.

Q Can you offer us any explanation of this remark?

A No, none at all. It doesn't ring any bells.

Q Was there any discussion of the use of wire taps or the use of wire tap information in the course of the Pentagon Papers investigation discussions that you participated in?

[86] A Nothing that I recall at all, no.

Q Were you aware that David Young had access to at least one summary letter in the course of the Pentagon Papers investigation?

A I don't think so.

Q Were you aware of anybody else who had access to the summary letters in the period between the time of the termination of the taps and the time when they were returned to Mr. Mardian and eventually came back to Ehrlichman?

A No.

Q Were you aware of a court order at any time in the Pentagon Papers investigation or trial requiring turning over to the defense electronic surveillance material on Daniel Ellsberg or on Morton Halperin?

A No.

Q Were you aware of an FBI search?

A You are talking about at the time that it happened? I have become aware of those things long after the fact.

Q All of this is up to May of 1973, up to the time that the prosecution was dismissed in May of 1973.

A Yes.

Q Were you aware of an FBI search in June and July of 1971 for records reflecting an overhearing of Daniel Ellsberg on the wire taps?

A No.

Q Of Morton Halperin?

A You mean of records? I am not aware of such.

[87] Q Did you in fact know that Daniel Ellsberg had been overheard on Morton Halperin's telephone prior to May of 1973?

A I don't know if I got one of the reports in which it indicated that he had been. If I did, I guess I was aware. I was not consciously aware of it.

Q Turning now to the disposition of the documents, there came a time when the files in your office relating to this matter were recollected by the FBI or Justice Department officials in 1971?

A I am not exactly sure what took place. I remember that the question arose at some time, and I presume it was then, as to whether my office still retained any of the reports that had been sent to us. I don't remember whether they did or didn't. But the intent was that if we had any, they would be assembled and turned back over to the FBI and it is my understanding that that is what was done.

Q Done by Mr. Higby?

A I presume so, yes, because he would have been the only one in the office that would have known where they were.

Q Were you directly involved in that process at all?

A I don't think so. The only vague recollection I have of perhaps having been involved is opening the safe in my office to see if there was anything still in that safe or anything in the safe. I don't recall that there was.

Q Were you aware of Mr. Sullivan's concern about [88] the disposition of these documents as relayed to the White House by the Assistant Attorney General, Mr. Mardian?

A Not at that time, no. I have read about it.

Q Other than what you have read in the public sources, do you know anything about the removal of the documents from the FBI to the Justice Department and thence to the White House?

A No.

Q Did you call Mr. Mardian to come out to San Clemente in early July of 1971?

A I don't think so.

Q Were you present at any discussion in which Mr. Mardian reported to the President or to Mr. Sullivan concerning the disposition of those documents?

A I don't have any recollection of that and I don't believe I was.

Q Did you ever become aware, other than through reading the newspaper or other public sources, that the documents were eventually put in Mr. Ehrlichman's White House office?

A No. I may have within the matter of a day or two before I read about it in the paper, in that I think I knew at the time that the documents were found or whatever the process was when it was determined they were in Ehrlichman's office and were brought out.

I don't know. But, I remember knowing at the time that they had found those files in Ehrlichman's office and I had not known prior to the time that they were found or [89] were turned back over to the FBI.

MR. CHRISTENBURY: Excuse me, Mr. Slocombe. Perhaps it would be helpful for the witness to indicate when he resigned from the White House, which may be helpful in this regard.

MR. SLOCOMBE: Yes.

MR. CHRISTENBURY: If you would.

THE WITNESS: I resigned on April 30.

Q BY MR. SLOCOMBE: Was there a period of time after April 30 when you still came to the White House?

A Yes.

Q How long did that period continue?

A Probably a couple of weeks, but on a decreasing basis.

Q Would it have continued as late as May 12?

A Probably so, yes.

Q I will identify again for the record, that May 12 is the date the Ellsberg/Russo prosecution was dismissed.

A I should point out at that time I was in close contact with John Ehrlichman, who had resigned at the same time and who at the time shared counsel with me and he and I were being called at the same time to appear before the grand jury, before the senate committee staff and that sort of thing. So, after we left the White House the two of us were together considerably and so I had pretty current knowledge of the developments as they related to John Ehrlichman.

Q Were you aware that the court out here in Los Angeles was informed that Daniel Ellsberg had been overheard on a wire tap on Morton Halperin's phone, but that the records [90] could not be located?

A I became aware of that as it became public.

Q When it became public you were aware of it?

A I guess so.

Q And at that time did you discuss with Mr. Ehrlichman where the records were?

A No, not that I recall. I don't believe so.

Q Do you remember an article which appeared in Time Magazine which was published February 25th, 1973 issue that is dated March 5, 1973, which will be Exhibit O, relating to an allegation of wire tapping by the White House or press people and the White House staff?

A I don't recall this article. Is that the question?

Q That is the first question.

A Do I remember reading the article?

Q Do you remember reading it?

A No.

(Whereupon the above described document was marked Exhibit O for identification by the Notary Public and is attached hereto.)

Q BY MR. SLOCOMBE: Do you remember any discussion in the White House prior to its appearance about how the White House should reply to the allegations?

A No.

Q What was your role at that time in late February of 1973 with respect to White House responses to allegations of improper—of White House responses to [91] allegations of the White House having engaged in activities at least in the view of the allegers, that are improper?

A It depended on what was alleged. It depended on the circumstances and what came up at what time. I was involved to some degree in this. This is a time when allegations were starting to develop at a fairly rapid rate. I was involved in responses and discussions and so on as to some of them and not in others, I believe.

Q Do you remember counseling with anybody as to what responses L. Patrick Gray should make if he were asked about the incident in his confirmation hearings?

A No.

Q Do you remember consulting with anybody in the White House or the President's office about responses they should make?

A To the Time article?

Q Well, on the—

A To this story you mean? The contents of this article?

Q Yes.

A No.

Q With John Dean?

A No.

Q Were you involved in any discussions of trying to find out where this story came from or where the leak in the FBI was?

A At some point, it may be with this story, I do remember the concern about it leaking out through the FBI and [92] that we were told—I don't remember by whom and by we I mean the White House—that there was a reporter at Time Magazine by the name of Sandy Smith I think, who had a direct line into the FBI and was getting a lot of straight leak type information out of the bureau and Time was printing this.

I do remember discussions as to who in the FBI was the source of the leak and I do remember focusing on one individual in the FBI as being the presumed source of the leak.

Q And that could have been this story?

A It could have been because I can't fix this recollection in terms of either a specific story or in time. But it is certainly possible that it was this or a series of stories of this sort at this general time.

Q In your CBS interview with Mike Wallace, you referred to leaks to Time Magazine which you assumed were by Mark Felt.

A Right.

Q Is that the same set of incidents?

A Yes, that is the one I am referring to. I just referred to it here, yes.

Q With whom were those conversations conducted?

A I am not sure. I don't know.

Q Could they have been conducted in any room in which the taping equipment was operative?

A Probably, yes.

Q So that those conversations would be reflected on tape?

A It could be.

[93] Q Do you remember—I assume from your earlier answers you don't—but I will ask for the record, do you remember what L. Patrick Gray said to the Senate Judiciary Committee about these taps?

A No.

Q Do you remember what the White House, the President's office said in response to inquiries about the taps?

A No.

MR. SLOCOMBE: No further questions.

EXAMINATION

BY MR. CHRISTENBURY:

Q I just have a couple of questions.

Mr. Haldeman, earlier in the deposition, you described your role as an assistant to Mr. Nixon in terms of a generalist, to use that term. I wonder if we could focus particularly on your responsibilities as they related to the conduct of national foreign affairs. What were your duties and responsibilities in that regard?

A Well, as far as the substance of conducting the foreign affairs, I did not have a direct line responsibility. As a practical, operating matter, I had the kind of a job as I tried to say earlier, that was a pure staff job. I was involved in everything of any substance or importance that came within the President's purview. Foreign policy was certainly there and national security and all the aspects were certainly a major, if not the major, subject that did concern the [94] President.

As a result of that, I was involved in all of the ongoing development of foreign policy and national security decision making at the highest level, the President's level. But, not procedurally in the sense of the fact that I did not do position papers. I didn't work with the National Security Council. But in the early days of the administration for example, Dr. Kissinger was a new man as far as Nixon was concerned. Nixon was a new man as far as Kissinger was concerned. They didn't know each other.

In fact, Kissinger had opposed Nixon in some of his policies prior to the election of 1968. Kissinger consulted with me frequently and extensively on the process of working with President Nixon and of trying to understand the man and of trying to understand his own position with the man.

He was in a very responsible role but had some insecurity as to exactly where he fit at the outset and how he fit in the overall operation. He found himself misunderstanding and misinterpreting from time to time the mo-

tives behind actions and statements and so forth and would seek clarification through discussion.

So I became quite close on a personal basis to Dr. Kissinger during the transition period and then when we came down to Washington as a result of that, was very much involved in every step of every major national security move.

I was completely brought into it and involved in it, for instance in the whole decision making process and implementation process of the Cambodia bombing in the very early [95] months of the administration which was a highly secret activity and of limited knowledge as to very few people.

I was completely aware of and involved in this. As a matter of fact, also in Dr. Kissinger's early China overtures and the early Viet Nam negotiating overtures and the secret trips to Paris and the covers that we set up for those, which I was involved in.

There were meetings that were held on airplanes in the Paris Airport and with General Haig to go over the developments.

I am just describing the continuing position of total involvement in the sense of being aware of and counseling with Kissinger on the means of implementing and getting decisions to the President and getting favorable decisions implemented after they were done.

He talked with me a lot about his problems with the bureaucracy and consulted with me on that. He talked also about his concern about the leaks. But his concerns were not only as to the NSC, but other parts of the government where they were leaking.

So there was a constant flow of two-way communication and participation all through this period and all through the entire time I was in the White House. The same was true on a limited basis as to the domestic policy areas, but less so because John Ehrlichman was more of a worker on a basis of long range history than Kissinger was at the outset.

Q Let me focus your attention again on Plaintiffs Exhibits A, B, C and D. Plaintiffs' Exhibit A as you recall, [96] is the December 29 summary letter from the Federal Bureau of Investigation to the President regarding an article that Clark Clifford was going to write and the subsequent documents or notes by you and by Mr. Ehrlichman and by Mr. Magruder.

Focusing on that series of documents and events, did you perceive that the activities which you had participated in there were consistent with and required in the interest of national security?

A Absolutely. That was the whole point of the concern here as I look back on it now. There was a concern about what Clifford was going to do and what he might do. It was a concern as it related to two areas as I think I mentioned, the conduct of the war and really more importantly, the conduct of the peace negotiations.

The problems were in dealing with both and most importantly, the problem—Kissinger was very concerned with credibility, with his own credibility in the sense of his ability to deal secretly with the North Vietnamese in the course of peace negotiations.

If the fact of his doing that or anything signalled to them and signals are very important things to Kissinger, that signalled to them that the privacy of their communications was being violated at least he felt it could have broken down the talks. So there was an enormous concern about any such thing coming out. An article of this sort I can speculate could, given the background knowledge that Halperin had about some of these things, have created that kind of concern. Now today, that is speculation, trying to remember [97] back to the situation at that time.

But it seems to me that it is valid. The sensitivity—at least I was led to believe and I had no basis for challenging this at all--the sensitivity of these things was enormous and there was a depth of concern on Dr. Kissinger's part and on the President's part that was very great as to the leaks for this kind of reason and leaks from any source.

Q If an article were to be written critical of and possibly detrimental to the then national situation with regard to the war, did you perceive it as in the interest of the national security and the interest of the national policy to bring forth facts which could clarify and bolster the national position in this regard?

A Yes, especially there may well have been a necessity to counteract if there was a breach of security in some way to counteract and try and cover it up in effect. That is a bad word in my life.

Q Lastly, Mr. Haldeman, I don't want to belabor this point, but you have described your activities generally throughout this period. As to each of the activities that you have described, did you believe in good faith that your actions were lawful?

A Absolutely at all times in every respect.

Q Without repeating in depth all that you have testified, what was the basis of your belief that your activities with regard to electronic surveillance material were lawful?

A Summing it up, I have sort of gone into it in depth before I think—but summing it up, it was knowledge and [98] it was that it was an ongoing practice. It was the knowledge that the current practice had been used and put into motion by responsible officials of the government. There was the total absence of knowledge or of any kind of indication that there was any possibility to the contrary.

MR. CHRISTENBURY: Thank you. No further questions.

FURTHER EXAMINATION

BY MR. SLOCOMBE:

Q Just a few questions more based on the examination by your counsel.

Did you consider yourself a substantive foreign policy expert?

A Expert? No.

Q Did your responsibilities with respect to foreign policy and national security include other than with respect to these wire taps, the evaluation of or analysis of information or intelligence?

A My responsibilities did not in the substantive sense. I was for instance, at the outset the principal contact between the President-elect and the CIA. I set up the procedure for the CIA reporting to the President. I did the revisions in the procedure of the CIA reporting to the President, not only in terms of procedure but in terms of contents because the president found the CIA reports to be totally—not to be totally careful and to be frequently of limited value. He was deeply concerned about the quality of the reporting and the daily briefing and that sort of thing.

[99] Once the procedures were set up and once things were revised, I stepped out of the mainstream of that. Dr. Kissinger maintained the mainstream. In fact, the President moved the control of the CIA reporting process to Kissinger and they reported to him rather than to the President in the daily briefs. I was not a substantive expert.

I did not look at the reports and say that they were lousy reports or that they were wrong. But I looked at them in terms of the fact that they were presenting far more information that the President wanted in these areas and far less than he wanted in those areas and worked again as a conduit at the direction of the President in those areas. I also was asked whether I considered myself to be a substantive expert in foreign policy. I did not. I said I did not.

However, I was clearly the most able and substantive expert in Richard Nixon, of anybody at the White House at that time and Richard Nixon as President of the United States, was the man responsible for the foreign policy of the United States.

Therefore, I was by the posture very much involved in the process of the development and implementation of foreign policy, not as a substantive expert in the subject

matter but as a intimate associate of the man responsible for this area.

Q What was your role then? Without being in any way pejorative, might one describe it as White House public relations, that of making sure the White House story was effectively conveyed to the public?

[100] MR. CHRISTENBURY: Excuse me. Possibly he could help in this regard. I don't see the relevancy of his role, if there was such with regard to the White House public relations.

MR. SLOCOMBE: The relevancy has to do with the opportunity which he had as the expert who was sensitive and responsible in his role as a conduit of what information should be passed on from the wire tap records.

MR. CHRISTENBURY: I don't perceive any relevancy. I think he has responded to your specific inquiries as to the specific articles and as to his role in that regard. That is, his role or his knowledge about public relations generally, that is unrelated to these wire taps. I don't perceive any relevancy.

THE WITNESS: May I respond to that in a sense without answering the question? There is an error in the premise. It is an error in this premise. There is a common failing of lawyers in the world that public relations is something different than it is. One of the greatest pluses of my work was the relationship with Dr. Kissinger, that he was not a lawyer and therefore didn't suffer under that delusion and clearly recognized that a policy that is not understood and properly presented can't be properly executed and that public relations is not a thing apart, but is an integral part of development and implementation of policy, point A.

Point B, I am not and was not and brought not to the White House any expertise in public relations. That is another common delusion of not only lawyers but of everybody else in the world that advertising men are public relations men. [101] The only people who will deny it are the public relations men, who throw up at the thought

because my career prior to the White House was in advertising, not public realtions.

Advertising is a totally different field than that of public relations. I did not bring to the White House any role or perceived expertise in the field or area of public relations nor did I purport to. I was not in fact nor was I considered to be in any sense a public relations expert or operative either before, during or after my time at the White House, as ultimate results proved rather conclusively.

Q Did a part of your responsibilities include what is called advertising or public relations or whatever name is attached to the making sure—

A Well, by saying whatever it is called you could say law or medicine. No doctor would accept that. It wouldn't be much of a doctor. You probably wouldn't accept that. That applies to public relations and advertising.

Q May I describe the function that I am referring to and then if you carried it out, you may say so. Did you make sure that the administration policies and purposes were presented in the most effective light and that criticism of them was answered effectively?

MR. CHRISTENBURY: Just a moment.

MR. SLOCOMBE: In addition to any legal argument, there is a second question that you have put in issue by your question of Mr. Haldeman and his responsibilities at the White House and their relative weight.

MR. CHRISTENBURY: I think that your line of questioning [102] asked what his responsibilities were and we were simply clarifying that.

MR. SLOCOMBE: I am not disputing the relevancy of the question.

MR. CHRISTENBURY: I appreciate that. I will.

MR. SLOCOMBE: Did his responsibilities in the foreign policy area also include making sure that the public was properly informed of the administration's policies and the criticisms of those policies were effectively answered.

MR. CHRISTENBURY: I think that I understand your question. But it seems that in effect, that the question has been answered. Mr. Haldeman explained his role with regard to Dr. Kissinger and the effect on policy, which was not properly understood and was not properly implemented. I think that that is what your question is going to. I am saying that it is on the record and we can have that read back.

What I am saying saying is that I believe the question has been asked and answered already by the witness. If we are going into the area of foreign policy which I gather was the later refinement of your question.

MR. SLOCOMBE: Your understanding is that the state of the record was that the answer was yes? I would be happy to stipulate to that.

MR. CHRISTENBURY: I think that the witness has answered. We could have it read back.

MR. SLOCOMBE: I think it would be hard to find.

MR. CHRISTENBURY: Maybe the witness can explain again what his statement was with regard to Dr. Kissinger and the [103] concept of—

MR. SLOCOMBE: That is not the question I asked.

MR. CHRISTENBURY: I thought that was the way the refinement went. I think that that was my only reservation. I think it is a broad question as to what his role was generally.

(Discussion off the record.)

Q BY MR. SLOCOMBE: With respect to the exhibits, it is the case is it not that those exhibits were to respond, to neutralize the criticism of the policy and not whether or not Clark Clifford's article would reveal information which has been obtained by anybody from classified sources?

MR. CHRISTENBURY: I would only object as to the term "neutralization."

Q BY MR. SLOCOMBE: All right, respond to that and strike "neutralization."

A Counteraction is the word used in here. I don't know that that is the case.

Q If that is the case, what parts of—

A Well, that is the area in which he is dealing here. But, Magruder's response in this particular memorandum—I don't know that that was the basis of concern to begin with.

Q In your instruction, "Let's act," does that not relate to preparing counter measures?

A The preparation for effective counteraction was warranted as was spelled out here.

Q Was it your judgment that it was proper to use information obtained from a wire tap installed to detect leaks [104] to gather material either of substance or of timing and knowing what was going to happen in the future, to neutralize criticism of administration foreign policy that the administration judged to be damaging?

A You are back to neutralizing. It is counteracting whatever might be contained in an action directed against administration policy in the conduct of the war.

Q I accept the correction.

A Okay. The question is that there was no question in my mind but that the concern here was directly a concern within the area and under the umbrella of the conduct of the war and of the peace talks and of national security, in other words.

Q So it would be proper to use information from this source to advance the administration's national security policy in that broader sense?

A No. That is not what I am saying. I would say to be proper to avoid using information—to avoid leaking information to avoid—to be aware of problems or the possibility which is still being dealt with here. I don't even know that this ever happened. But it was a possibility of information being used adversely or in an adverse sense to the national policy and derived from secret sources and classified sources or whatever the proper word is.

Q But counter measures are advanced responding to the substance of the article, not preventing the Clifford article from containing leaked information.

A I don't know that there is any way of preventing the article if he already has the information, from containing [105] the information. I don't know that we knew it was going to contain leaked information. But it was clear at least at times to me in looking at this now years later, that there was a possibility and that that was a source of concern or could have been. I don't know what generated this to begin with. I don't know for that matter that the whole matter was generated by information obtained from wire taps to begin with.

There is indicated that there were other sources involved in the initiation of this area of concern.

Q But the game plan which Magruder developed to which you responded "Let's act," had to do with responding to the substance of the criticism you anticipated Mr. Clifford would make; didn't it?

A Yes, oversimplifying it, yes.

Q Did you think that that was a proper use? Did you think that it was proper to make available information obtained from a wire tap for use for that purpose?

A I don't know that that question ever occurred to me. The concern of the potential information—the concern in the wire tap that seems to me is the potential of the contact between—well, I don't know whether Halperin or Clifford—whether Halperin was then an individual who was in contact with Clifford and with things that he was planning to say.

You have got a situation where you know things are leaking, where you know that there is a danger of exposure of classified secret activities and negotiations for peace and the conduct of the war. That is secret knowledge that is in the [106] mind and perhaps in the papers of an individual who had access to it up to a certain prior point who was then in contact with people who were going to take public positions which could conceivably involve

the use of this kind of information. Why else are they in contact with them?

Q And did you feel you were under any responsibility to limit the use of information obtained from the wire tap to preventing leaks or could it also be used to prepare responses to the substance of criticism?

A I don't think I directed myself or was in a position to direct myself to the use of the material other than bringing it to the attention of Haig, Kissinger or the President.

Q How about bringing it to the attention of Jeb Magruder?

A This whole matter took place before I was in the stream of the receipt of this information. You see, you have not brought into evidence the very puzzling dichotomy of memoranda that preceded all the stuff you have put in here. I find that enormously strange as to how this all got started to begin with and what generated it. If we knew that, we might be able to answer some of what we are looking into here.

MR. SLOCOMBE: I think the difference in the views is clear. I have no further questions.

MR. SCHWARTZ: No questions.

(Whereupon it was stipulated by and between counsel that the deposition may be signed before any Notary Public.)

[107] (Whereupon four pages of handwritten notes of Mr. Ehrlichman were marked as Exhibit N for identification by the Notary Public and are attached hereto.)

WITNESS

[108] STATE OF CALIFORNIA
SS
COUNTY OF

That on , 19 , the foregoing deposition was submitted to H. R. HALDEMAN, the witness, for examination and was read by the witness, at which time any changes desired were entered upon the deposition, and that thereafter the deposition was signed by the witness before me.

Notary Public for the County
of
State of California

[109] STATE OF CALIFORNIA

ss.

County of Los Angeles

I, Sally Yerger, C.S.R. and Notary Public for the County of Los Angeles, California, certify:

That the foregoing deposition of H. R. HALDEMAN was taken before me pursuant to Notice and Court Order at the time and place therein set forth, at which time the witness was put on oath by me;

That the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me, and were thereafter transcribed;

That it was stipulated by counsel that said deposition may be read, corrected and signed by the witness pursuant to Rule 30 (e) of the Federal Rules of Civil Procedure;

That the foregoing deposition is a true record of the testimony and of all objections made at the time of the examination.

I further certify that I am neither counsel for nor related to any party to said action, nor in anywise interested in the outcome thereof.

IN WITNESS WHEREOF, I have subscribed my name and affixed my seal, this day of February, 1976.

/s/ _____

SALLY YERGER

Notary Public in and for the County of Los Angeles, State of California

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